

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(1) THE OFFICE OF RECEIVER AND HIS APPOINTMENT/(i) Introduction/301. Appointment as an officer of the court or an agent.

RECEIVERS (

1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER

(1) THE OFFICE OF RECEIVER AND HIS APPOINTMENT

(i) Introduction

301. Appointment as an officer of the court or an agent.

A receiver is a person appointed for the collection or protection of property¹. He is appointed either by the court or out of court by individuals or corporations. If he is appointed by the court, he is an officer of the court deriving his authority from the court's order². If he is appointed out of court, he is an agent and has such powers, duties and liabilities as are defined by the instrument or statute under which he is appointed and derive from the general law of agency³. For the protection of the civil interests of service personnel, the appointment of a receiver out of court is, in certain cases, restricted⁴.

¹ A body corporate is not qualified for appointment as receiver of the property of a company: Insolvency Act 1986 s 30; *Portman Building Society v Gallwey* [1955] 1 All ER 227, [1955] 1 WLR 96. See also COMPANIES vol 15 (2009) PARA 1345.

² See eg *Burt, Boulton and Hayward v Bull* [1895] 1 QB 276 at 279-280, CA, per Lord Esher MR; *Boehm v Goodall* [1911] 1 Ch 155 at 160; *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468 at 477, CA, per Buckley LJ. As to the effect of appointment by the court see PARA 373 et seq post; and see generally *Picarda Law Relating to Receivers, Managers and Administrators* (2nd Edn, 1990) pp 339-355.

³ See eg *Ford v Rackham* (1853) 17 Beav 485; and AGENCY vol 1 (2008) PARA 29 et seq.

⁴ See the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 2(2)(a) provisos (i), (v), 3; and ARMED FORCES.

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302. Administrative receivers.

The Insolvency Act 1986 introduced a new type of receiver known as an 'administrative receiver' who is:

- 1 (1) a receiver or manager of the whole, or substantially the whole, of a company's property appointed after 29 December 1986 by or on behalf of the

- holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or
- 2 (2) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property¹.

An administrative receiver has specific powers and duties² but many of the provisions of corporate insolvency law applying to receivers and managers generally apply also to administrative receivers³.

An administrative receiver may also be appointed under certain provisions of the Railways Act 1993⁴.

1 See the Insolvency Act 1986 ss 28, 29(2), 443; and COMPANIES vol 15 (2009) PARA 1337.

2 See COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 381 et seq.

3 See COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 380.

4 See the Railways Act 1993 ss 59-62; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 187-189.

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(ii) Appointment out of Court

303. Appointment out of court under mortgages and debentures.

If a mortgage is made by deed it is usual to rely on the statutory power to appoint a receiver¹. The statutory provisions may be varied, added to or wholly excluded by agreement between the mortgagor and the mortgagee². The statutory powers are exercisable by local authorities for enforcing charges under the Public Health Act 1936³.

Debentures under seal issued by a company in the ordinary form, giving a floating charge only, are mortgages within the meaning of the Law of Property Act 1925⁴, and, after the security has crystallised to a fixed charge, the debenture holders are entitled to appoint a receiver⁵. However, a debenture or the covering trust deed usually gives an express power to appoint a receiver of the property comprised in the security in certain specified events, and because the powers of a receiver appointed under the statutory power alone are limited it is the universal practice to confer extended powers in the debenture or trust deed. Thus a receiver acting under the statutory power alone is a receiver only of income and may not collect such property as book debts which are subject to the charge⁶. Although a receiver appointed under the statutory power is deemed to be the agent of the mortgagor⁷, the mortgagee may, in special circumstances, be bound by his acts⁸. There is usually also an express stipulation in the debenture or trust deed that the receiver is to be the agent of the company⁹.

1 See the Law of Property Act 1925 ss 101(1)(iii), 109. These provisions apply to mortgages executed after 1881: see s 101(5). In the case of mortgages by deed of land executed prior to 1 January 1882, when the Conveyancing Act 1881 came into force, the powers conferred on mortgagees by 23 & 24 Vict c 145 (Powers of Trustees, Mortgagees, etc) (1860) ss 11-24 (repealed), including the power of appointing a receiver, may still be available: see *Re Solomon and Meagher's Contract* (1889) 40 ChD 508; and MORTGAGE vol 77 (2010) PARA 475 et seq.

2 See the Law of Property Act 1925 s 101(3), (4); *Re Della Rocella's Estate* (1892) 29 LR Ir 464; and MORTGAGE vol 77 (2010) PARA 476. Where the goodwill of a business is included in the security it is usual for mortgages and invariably the rule for debentures to provide for the appointment of a manager as well as of a receiver: see eg *Paterson v Gas Light and Coke Co* [1896] 2 Ch 476, CA; *Re Hale, Lilley v Foad* [1899] 2 Ch 107, CA; *Re Ryland's Glass and Engineering Co Ltd, York City and County Bank Co Ltd v Ryland's Glass and Engineering Co Ltd* (1904) 118 LT Jo 87; and PARA 484 post. See also COMPANIES vol 15 (2009) PARA 1340. As to the power to distrain see DISTRESS vol 13 (2007 Reissue) PARA 925.

3 See the Public Health Act 1936 s 291(4); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 123.

4 See the Law of Property Act 1925 s 205(1)(xvi) ('mortgage includes any charge or lien on any property for securing money or money's worth').

5 A receiver or manager of the whole or substantially the whole of a company's property so appointed is an administrative receiver: see PARA 302 ante.

6 See *Rutter v Everett* [1895] 2 Ch 872 at 877.

7 Law of Property Act 1925 s 109(2): see MORTGAGE vol 77 (2010) PARA 101 et seq. The receipt of rent by a receiver (being the agent of the mortgagor) appointed by a mortgagee does not, however, of itself create a tenancy between the tenant and the mortgagee: see *Lever Finance Ltd v Trustee of Property of Needleman* [1956] Ch 375 at 382, [1956] 2 All ER 378 at 382-383, obiter per Harman J; followed by Cross J in *Stroud Building Society v Delamont* [1960] 1 All ER 749, [1960] 1 WLR 431.

8 See *Stroud Building Society v Delamont* [1960] 1 All ER 749, [1960] 1 WLR 431, where the secretary of a building society was appointed receiver under statutory power by the society as mortgagee, and it was held that the relationship of landlord and tenant created between the occupier and the mortgagee by the receiver's conduct amounted to acceptance by the mortgagee of the occupier as tenant; *Chatsworth Properties Ltd v Effiom* [1971] 1 All ER 604, [1971] 1 WLR 144, CA, where the mortgagees' solicitors instructed the occupiers to pay rent to a receiver appointed by the mortgagees and not to their 'former landlords', and the mortgagees were precluded from denying their own acceptance of the occupiers as tenants.

9 Whether he is the agent of the company or of the debenture holders is a matter of construction of the instrument authorising his appointment: *Cully v Parsons* [1923] 2 Ch 512; *Central London Electricity Ltd v Berners* [1945] 1 All ER 160. See also *Channel Airways Ltd v Manchester Corpn* [1974] 1 Lloyd's Rep 456; and COMPANIES vol 15 (2009) PARAS 1349-1350.

UPDATE

303 Appointment out of court under mortgages and debentures

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 7, 8--*Stroud Building Society v Delamont*, cited, applied in *Mann v Nijar* [1998] EG 188 (CS), CA.

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304. Other instances of appointment out of court.

An appointment of a receiver out of court may be made, for example, by a landowner who desires by this means to secure to annuitants annuities which he has granted out of his estate¹, or by partners who wish to realise the assets of the partnership without the assistance of the court². A receiver may be appointed under an inspectorship deed to collect and receive for the benefit of creditors all debts and money due to the debtor³. Apart from statute, a receiver and

manager could be appointed by the trustees of settled estates with the consent of the tenant for life⁴; and it appears that a tenant for life may still appoint or consent to the appointment of a receiver of rents and profits, but he cannot assign any statutory power to the receiver⁵. An agent to receive rents has not, as such, authority to serve notice to quit, but he may have that authority if he is also agent to let⁶.

1 *Ford v Rackham* (1853) 17 Beav 485; *Knight v Bowyer* (1857) 23 Beav 609 (affd (1858) 2 De G & J 421); *Cradock v Scottish Provident Institution* [1893] WN 146 (affd [1894] WN 88, CA). See also *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 114; *Brooks v Greathed* (1820) 1 Jac & W 176. As to annuity deeds generally see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 790 et seq.

2 *Turner v Major* (1862) 3 Giff 442. See also PARTNERSHIP vol 79 (2008) PARA 162 et seq.

3 *Hobson v Jones* (1870) LR 9 Eq 456. Such a receiver is not regarded as the agent of the inspectors, and they are not liable to account for any money misappropriated by the receiver: *Hobson v Jones* supra.

4 See *Bagot v Bagot* (1841) 10 LJ Ch 116.

5 See the Settled Land Act 1925 s 104; and SETTLEMENTS. Subject to certain exceptions, however, no settlement created on or after 1 January 1997 is a strict settlement and no settlement is deemed to be made under the 1925 Act thereafter: see the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 65.

6 *Doe d Mann v Walters* (1830) 10 B & C 626; *Doe d Earl of Manvers v Mizem* (1837) 2 Mood & R 56; and see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 225.

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305. Mode and terms of employment.

A receiver appointed under the statutory power of mortgagees¹ may be appointed under hand, and the appointment need be made by deed² only if the receiver is appointed attorney; it need not be made by deed if the mortgage contains an express delegation to sell and convey in the name of the mortgagor³. Where there is a special agreement between the borrower and the lender, the mode of appointment must accord with that agreement⁴. In all cases of appointment out of court the powers and duties of the receiver must depend on the terms of his appointment⁵. If the statutory provisions apply⁶, the receiver is entitled to retain out of the money received by him his costs, expenses and remuneration not exceeding the rate of 5 per cent on his receipts or such other rate as the court allows on application by him⁷. In other cases, if the instrument is silent as to remuneration, the receiver will be entitled only to remuneration on the basis of a quantum meruit⁸. If the statutory provisions apply, the receiver may by direction of the mortgagee pay to him any balance remaining, after payment of outgoings and interest, in or towards discharge of principal, the ultimate balance being payable to the person who would have been entitled if no receiver had been appointed or who is otherwise entitled to the property⁹. In other cases, in default of provision to the contrary, any balance will be held in the first instance on behalf of the appointing party¹⁰.

The receiver of a public undertaking appointed out of court under a statute is a public officer and a trustee for the public; he is, therefore, not entitled to make any profit for himself out of money passing through his hands, and may be made to account for such profits even after his accounts have been examined and closed¹¹.

1 Ie under the Law of Property Act 1925 s 101(1)(iii): see PARA 303 ante.

2 An instrument intended but failing to operate as a deed may, nonetheless, operate as an instrument under hand: see *Windsor Refrigerator Co Ltd v Branch Nominees Ltd* [1961] Ch 375, [1961] 1 All ER 277, CA; and DEEDS AND OTHER INSTRUMENTS. A seal is no longer necessary for the valid execution of a deed by an individual: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b).

3 Law of Property Act 1925 s 109(1).

4 As to the appointment of a receiver or manager see generally COMPANIES vol 15 (2009) PARA 1340.

5 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 153; and see *Davis v Dendy* (1818) 3 Madd 170 (mortgagee allowed expense of receiver); *Gilbert v Dyneley* (1841) 3 Scott NR 364. As to receivers of the property of societies registered under the Industrial and Provident Societies Act 1965 see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2411, 2456.

6 See the Law of Property Act 1925 s 101(3), (4); and PARA 303 ante.

7 Ibid s 109(6). Where no rate of commission is specified in the instrument appointing the receiver, he is entitled to a commission of 5% without making an application to the court: *Marshall v Cottingham* [1982] Ch 82, [1981] 3 All ER 8.

8 *Prior v Bagster* (1887) 57 LT 760; and see COMPANIES vol 15 (2009) PARA 1356.

9 See the Law of Property Act 1925 s 109(8).

10 See *Re Vimbos Ltd* [1900] 1 Ch 470, where the receiver claimed to retain the balance as remuneration and the court held that it had no jurisdiction to make an order fixing his remuneration on a summons by the liquidator, leaving the liquidator to bring an action against the receiver. The court now has such power to fix the remuneration of the receiver: see COMPANIES vol 15 (2009) PARA 1356.

11 *Earl of Lonsdale v Church* (1789) 3 Bro CC 41.

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306. Liability of receiver appointed out of court.

Prima facie a receiver appointed out of court, being an agent only, is not personally liable in respect of transactions properly entered into by him as receiver¹. However, if a receiver gives his personal promise to pay a debt for which his principals may become liable, he is bound by the promise², but the question whether the promise is the personal promise of the agent or the promise only of his principals depends in each case upon the intention of the parties, to be gathered from the terms of the document, if any, containing the promise³.

A receiver appointed under the powers contained in any instrument, other than an administrative receiver⁴, is, to the same extent as if he had been appointed by order of the court:

- 3 (1) personally liable on any contract entered into by him in the performance of his functions, except in so far as the contract otherwise provides, and on any contract of employment adopted by him in the performance of those functions; and
- 4 (2) entitled in respect of that liability to indemnity out of the assets⁵.

He is entitled, as receiver, to ratify contracts made by others ostensibly as agents for the company⁶. Where under the express terms of a debenture the receiver is agent for the company, his authority as agent is determined⁷ by the commencement of liquidation, whether voluntary or compulsory, and he is personally liable under contracts made after that date⁸. As

an agent, a receiver may always render himself personally liable in damages for breach of warranty of authority⁹. A receiver may be liable in tort as a trespasser where the appointment is defective or where the title of a third person such as a trustee in bankruptcy prevails over that of the debenture holders and the company¹⁰. A receiver who is sued with the company, fraudulent conspiracy between the defendants being alleged, may not refuse to produce material company documents on the ground that he holds them as agent for the debenture holders¹¹.

1 *Owen & Co v Cronk* [1895] 1 QB 265, CA, where a receiver appointed by debenture holders received from the manager of the company and paid into his receivership banking account, without any knowledge of its origin, money which had been handed to the manager by the plaintiff firm under protest and 'duress of goods'; the firm sued the receiver for money had and received to its use, but he was held not personally liable. As to a receiver of the property of a company see the text and notes 4-11 infra. As to receivers signing bills of exchange see *Kettle v Dunster and Wakefield* (1927) 138 LT 158; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1476; and COMPANIES vol 15 (2009) PARA 1370. As to claims for money had and received as between principal and agent see CONTRACT; and see also generally AGENCY vol 1 (2008) PARAS 147, 154.

2 *Robinson Printing Co Ltd v Chic Ltd* [1905] 2 Ch 123 at 134.

3 As to the liabilities of agents see AGENCY vol 1 (2008) PARA 156 et seq.

4 As to administrative receivers see PARA 302 ante; and COMPANIES vols 15 (2009) PARA 1337, COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 381 et seq.

5 Insolvency Act 1986 s 37(1)(a), (b): see generally COMPANIES vol 15 (2009) PARA 1350.

6 *Lawson v Hosemaster Machine Co Ltd* [1966] 2 All ER 944, [1966] 1 WLR 1300, CA. See also COMPANIES vol 15 (2009) PARA 1350.

7 However, not all his powers as receiver are determined. He may still hold and dispose of the property comprised in the debenture: see *Sowman v David Samuel Trust Ltd* [1978] 1 All ER 616, [1978] 1 WLR 22; and PARA 433 post.

8 *Thomas v Todd* [1926] 2 KB 511. In some cases he may be entitled to be indemnified by the debenture holders: *Jennings v Mather* [1902] 1 KB 1, CA; see also *Collen v Wright* (1857) 8 E & B 647, Ex Ch; *Gosling v Gaskell* [1897] AC 575, HL; AGENCY vol 1 (2008) PARA 156 et seq; COMPANIES vol 15 (2009) PARA 1349.

9 See note 3 supra.

10 See *Re Goldberg (No 2)*, ex p *Page* [1912] 1 KB 606. Cf *Re Simms*, ex p *Trustee* [1934] Ch 1, CA.

11 *Fenton Textile Association Ltd v Lodge* [1928] 1 KB 1, CA.

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307. Effect of agency on running of time.

Since a receiver appointed out of court is an agent, it follows that a payment on account of a debt made by him within the scope of his authority may constitute an acknowledgment binding on his principal sufficient to take the case out of the Limitation Act 1980¹. However, a receiver is not entitled as against his principal to pay statute-barred arrears of interest; nor is a mortgagee authorised, as against his mortgagor, to do so out of money paid to him by the receiver². Where a receiver is expressly constituted a trustee³, the limitation provisions affecting trustees apply⁴.

1 *Re Hale, Lilley v Foad* [1899] 2 Ch 107, CA: see LIMITATION PERIODS vol 68 (2008) PARA 1198.

2 *Hibernian Bank v Yourell (No 2)* [1919] 1 IR 310.

3 Formerly, a receiver appointed by deed and constituted an express trustee would have been unable to take the benefit of the Statutes of Limitation: *Knight v Bowyer* (1858) 2 De G & J 421. A receiver appointed by the court may be a constructive trustee: see EQUITY vol 16(2) (Reissue) PARA 854; TRUSTS vol 48 (2007 Reissue) PARA 700 et seq.

4 As to the limitation provisions affecting trustees see LIMITATION PERIODS vol 68 (2008) PARA 1140 et seq.

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308. Determination of authority.

The appointment of a receiver by the court operates as a discharge of a previous appointment out of court by a party to the action¹, and the authority of a receiver appointed out of court, as of any other agent, may be determined by the death of the principal². However, having regard to the statutory definition of 'mortgagor' and 'mortgagee'³, this appears not to be the case where the appointment is made under the statutory⁴ power⁵.

1 *Hand v Blow* [1901] 2 Ch 721 at 732, CA; and see *Re Della Rocella's Estate* (1892) 29 LR Ir 464. As to the practice in such cases see *Practice Note* [1932] WN 79.

2 *Re Lord Annaly, Crawford v Lord Annaly* (1891) 27 LR Ir 523 at 536: see AGENCY vol 1 (2008) PARA 188.

3 For the meaning of 'mortgagor' and 'mortgagee' see MORTGAGE vol 77 (2010) PARA 104.

4 Under the Law of Property Act 1925 s 101(1)(iii): see PARA 303 ante.

5 See *ibid* s 205(1)(xvi). As to attorneys see the Powers of Attorney Act 1971 ss 4, 5; and AGENCY vol 1 (2008) PARA 175. As to the mortgagee's power to discharge a receiver and appoint another in his place see the Law of Property Act 1925 s 109(5); and MORTGAGE vol 77 (2010) PARA 476.

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(iii) Appointment by the Court

309. Status of receiver appointed by the court.

A receiver appointed by the court is in no sense an agent or trustee for the party at whose instance the appointment is made¹. He is an officer of the court appointed for the benefit of all the parties to the action², and their rights among themselves are not affected³. As between mortgagee and mortgagor, therefore, if the receiver steals⁴ or otherwise wastes the rents and profits, the loss must fall primarily on the mortgagor⁵; and as between vendor and purchaser the possession by a receiver appointed at the instance of the vendor is attributed to the purchaser from the date at which the purchase ought to have been completed⁶.

A receiver of the rents of house property appointed by the court is not the owner within the meaning of the Clean Air Act 1993⁷, for he does not receive the rents either on his own account or as agent or trustee for any other person⁸; nor, for the same reason, is he the owner within

the meaning of the Water Industry Act 1991 or the Water Resources Act 1991⁹; but, where an order has been made for possession to be delivered to a receiver appointed at the instance of an incumbrancer, the receiver becomes at once the landlord of the premises for the purpose of the Landlord and Tenant Act 1709¹⁰, and entitled, as against a judgment creditor who has levied execution subsequently to the order, to one year's arrears of rent, even though the order has not been drawn up and he has not in fact taken possession, and the tenants have not attorned to him¹¹.

A receiver appointed by the High Court or a county court in respect of the realisable proceeds of crime¹² occupies a special position. He is appointed following an application by the prosecution and cannot be appointed on an application by or on behalf of the defendant in order to preserve assets intended for the satisfaction of a confiscation order¹³.

1 *Angel v Smith* (1804) 9 Ves 335; *Bacup Corp'n v Smith* (1890) 44 ChD 395, CA; *Ingham v Sutherland* (1890) 63 LT 614; *Boehm v Goodall* [1911] 1 Ch 155; and see COMPANIES vol 15 (2009) PARA 1369. As to the effect of the appointment on existing contracts see PARAS 435, 489 post.

2 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 118; *Searle v Smales* (1855) 3 WR 437; *Bertrand v Davies* (1862) 31 Beav 429 at 436; *Seagram v Tuck* (1881) 18 ChD 296; *Davy v Scarth* [1906] 1 Ch 55 at 57; *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468, CA.

3 *Skip v Harwood* (1747) 3 Atk 564; *Cooke v Gwyn and Wight* (1748) 3 Atk 689; *Portman v Mill* (1839) 8 LJ Ch 161 at 165; *White v Smale* (1856) 22 Beav 72; *Ward v Royal Exchange Shipping Co Ltd, ex p Harrison* (1887) 58 LT 174 at 178; *Dreyfus v Peruvian Guano Co* (1889) 42 ChD 66 at 75; *Durran v Durran* (1904) 91 LT 187 at 189.

4 As to theft generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 282 et seq.

5 *Rigge v Bowater* (1791) 3 Bro CC 365; *Hutchinson v Lord Massareene* (1811) 2 Ball & B 49 at 55. As to rents collected by the receiver see further MORTGAGE vol 77 (2010) PARA 409.

6 *Boehm v Wood* (1823) Turn & R 332 at 341, 345.

7 For the meaning of 'owner' in the Clean Air Act 1993 see s 64(1) ('owner' in relation to premises means the person for the time being receiving the rack rent of the premises, whether on his own account or as agent or trustee for another person, or who would so receive the rack rent if the premises were let at a rack rent); and see further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 116.

8 See *Bacup Corp'n v Smith* (1890) 44 ChD 395, CA; and see *Re Sacker, ex p Sacker* (1888) 22 QBD 179 at 183, CA; *Re Cornish, ex p Board of Trade* [1896] 1 QB 99 at 104, CA, per Kay LJ; *Boehm v Goodall* [1911] 1 Ch 155.

9 See the Water Industry Act 1991 s 219(1); the Water Resources Act 1991 s 221(1) (both containing definitions of 'owner' in identical terms to that set out in note 7 supra); and WATER AND WATERWAYS vol 100 (2009) PARA 22.

10 See the Landlord and Tenant Act 1709 s 1; and DISTRESS vol 13 (2007 Reissue) PARA 924.

11 *Cox v Harper* [1910] 1 Ch 480, CA; *Hawkes v Smith* (1837) Sau & Sc 712 (a case under the corresponding Irish Act, 9 Anne c 8 (1710)).

12 Ie under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended) or the Drug Trafficking Act 1994 Pt I (ss 1-41) (as amended).

13 See *Re M (Restraint Order)* [1992] QB 377, [1992] 1 All ER 537 (decided under the Drug Trafficking Offences Act 1986 s 8 (repealed)).

UPDATE

309-312 Appointment by the Court

Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

309 Status of receiver appointed by the court

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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310. Money in the receiver's hands.

Money in the hands of a receiver appointed by the court is not in the custody of the law in the same way as money in the hands of a sequestrator¹. It may be that if the object of the action is to determine the rights of the parties or to ascertain what incumbrances exist on an estate and what are their priorities, or to settle a dispute as to title, the receiver holds money coming to his hands on behalf of the persons who may ultimately prove to be entitled². However, when the receiver is appointed at the instance and for the benefit of an individual, as in an ordinary case of equitable execution, or where a puisne incumbrancer or a particular class of incumbrancers or creditors obtain the appointment of a receiver on their own behalf in proceedings to which the prior incumbrancers are not parties, any funds collected by the receiver are held on behalf of the parties to the action alone according to their rights³, unless the prior incumbrancers have actively intervened to assert their rights before the rents were collected⁴ or there has been a direction to keep down interest on incumbrances of which they have elected to take the benefit⁵. Even where prior incumbrancers are defendants to a foreclosure action, they are not entitled to rents collected by the receiver in priority to the plaintiff in the absence of any special direction as to their application or of an inquiry as to priorities⁶.

Certain sums⁷ in the hands of a receiver appointed under the Criminal Justice Act 1988⁸ or in pursuance of a charging order⁹ must first be applied in payment of specified expenses incurred by a person acting as an insolvency practitioner¹⁰ and must then, after such payments, if any, as the High Court may direct have been made out of those sums, be applied on the defendant's behalf towards the satisfaction of the confiscation order¹¹. If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of such a receiver, he must distribute them among such of those who held property which has been realised¹², and in such proportions, as the High Court may direct after giving a reasonable opportunity for such persons to make representations to the court¹³.

Similarly, certain sums¹⁴ in the hands of a receiver appointed under the Drug Trafficking Act 1994¹⁵ or in pursuance of a charging order¹⁶ must first be applied in payment of specified expenses incurred by a person acting as an insolvency practitioner¹⁷ and second in making such payments, if any, as the High Court or a county court may direct, and must then be applied on the defendant's behalf towards the satisfaction of the confiscation order¹⁸. If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of

such a receiver, he must distribute those sums among such of those who held property which has been realised¹⁹, and in such proportions, as the High Court or a county court may direct after giving a reasonable opportunity for such persons to make representations to the court²⁰.

1 *Morrogh v Hoare* (1842) 5 I Eq R 195 at 203; *Re Hoare, Hoare v Owen* [1892] 3 Ch 94, doubting *Delany v Mansfield* (1825) 1 Hog 234; and see CIVIL PROCEDURE vol 12 (2009) PARAS 1380 et seq, 1507 et seq.

2 *Skip v Harwood* (1747) 3 Atk 564; *Piddock v Boulton* (1867) 16 LT 837; *Re Hoare, Hoare v Owen* [1892] 3 Ch 94 at 103.

3 *Bertie v Earl of Abingdon* (1817) 3 Mer 560; *Gresley v Adderley, Gresley v Heathcote* (1818) 1 Swan 573; *Ray v Butler* (1826) 1 Hog 381; *Thomas v Brigstocke* (1827) 4 Russ 64; *Salt v Donegall, Cocker v Donegall, Houlditch v Donegall* (1835) L & G temp Sugd 82; *Davoren v Collins* (1838) 2 Jo Ex Ir 807; *Morrogh v Hoare* (1842) 5 I Eq R 195. See also *Berney v Sewell* (1820) 1 Jac & W 647 at 650; *Morrison v Morrison* (1854) 2 Sm & G 564 (on appeal (1855) 7 De GM & G 214); *Re Butler's Estate* (1863) 13 I Ch R 453; *Davy v Price* [1883] WN 226.

4 *Murtagh v Tisdall, White v Tisdall, Cuffe v Tisdall, Lewburgh v Tisdall, Tisdall v Tisdall* (1839) 2 I Eq R 41; *Abbott v Stratton* (1846) 9 I Eq R 233; *Preston v Tunbridge Wells Opera House Ltd* [1903] 2 Ch 323. A mere notice to the tenants to pay rent is not sufficient: *Thomas v Brigstocke* (1827) 4 Russ 64; *Re Metropolitan Amalgamated Estates Ltd, Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497.

5 *Penney v Todd* (1878) 26 WR 502.

6 *Paynter v Carew* (1854) 23 LJ Ch 596. As to the effect of payment into court by a receiver see LIMITATION PERIODS vol 68 (2008) PARA 935.

7 Ie the proceeds of any charge imposed under the Criminal Justice Act 1988 s 78, the proceeds of the realisation, other than by the enforcement of such a charge, of any property under s 77 (as amended) or s 80, and any other sums, being property held by the defendant: s 81(1)(a)-(c). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

8 Ie under ibid Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

9 Ie under ibid s 78: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

10 Ie such expenses incurred by a person acting as an insolvency practitioner as are payable under ibid s 87(2): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

11 Ibid s 81(1).

12 See note 8 supra.

13 Criminal Justice Act 1988 s 81(2). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

14 Ie the proceeds of the enforcement of any charge imposed under the Drug Trafficking Act 1994 s 27, the proceeds of the realisation, other than by the enforcement of such a charge, of any property under s 26 or s 29, and any other sums being property held by the defendant: s 30(1)(a)-(c). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

15 Ie under ibid s 26 or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

16 For these purposes, a charging order is an order made under ibid s 27 imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Crown: ibid s 27(2). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

17 Ie under ibid s 35(3): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

18 Ibid s 30(1), (2).

19 Ie under ibid Pt I (ss 1-41) (as amended): see further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

20 Ibid s 30(3).

UPDATE**309-312 Appointment by the Court**

Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

310 Money in the receiver's hands

NOTE 11--The receiver is not entitled to deduct his own fees and disbursements from the amount: *Hansford v Southampton Magistrates' Court* [2008] EWHC 67 (Admin), [2008] 4 All ER 432.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(1) THE OFFICE OF RECEIVER AND HIS APPOINTMENT/(iii) Appointment by the Court/311. Duration of appointment by court.

311. Duration of appointment by court.

When a receiver is appointed for a limited time, as in the case of interim orders, his office determines on the expiration of that time without any further court order¹, and if the appointment is 'until judgment or further order' it is brought to an end by the judgment in the action. The judgment may provide for the continuance of the receiver, but this is regarded as a new appointment². If a further court order, although silent as to the receivership, is inconsistent with a continuance of the receiver, it may operate as a discharge³.

When a receiver has been appointed on an interlocutory application without any limit of time, it is not necessary to provide for the continuance of his appointment in the final judgment. The silence of the judgment does not operate as a discharge of the receiver or determination of his powers⁴. So, also, the appointment of a receiver generally by the judgment in an administration action need not be continued by the order on further consideration⁵.

1 *Re Shephard, Atkins v Shephard* (1889) 43 ChD 131 at 132-133, CA.

2 *Brinsley v Lynton and Lynmouth Hotel and Property Co* [1895] WN 53.

3 *Ponsonby v Ponsonby* (1825) 1 Hog 321, where, after an order appointing a receiver of the rents and profits of land, the land was sold under an order of the court and the purchaser put into possession by order of the court. As to the discharge of a receiver see PARA 463 et seq post.

4 *Cruse v Smith* (1879) 24 Sol Jo 121, CA; *Davies v Vale of Evesham Preserves Ltd* (1895) 43 WR 646. See also note 3 supra.

5 *Re Underwood, Underwood v Underwood* (1889) 37 WR 428.

UPDATE**309-312 Appointment by the Court**

Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(1) THE OFFICE OF RECEIVER AND HIS APPOINTMENT/(iii) Appointment by the Court/312. Extent of receiver's powers.

312. Extent of receiver's powers.

A receiver¹ appointed under the law of any part of the United Kingdom² in respect of the whole or part of any property or undertaking of a company and in consequence of the company having created a charge which, as created, was a floating charge³ may exercise his powers in any other part of the United Kingdom so far as their exercise is not inconsistent with the law applicable there⁴.

The powers of a receiver appointed under the Criminal Justice Act 1988⁵ or the Drug Trafficking Act 1994⁶ are exercisable in England and Wales only⁷ but both those Acts apply to property whether it is situated in England and Wales or elsewhere⁸.

1 'Receiver' includes a manager and a person who is appointed both receiver and manager: Administration of Justice Act 1977 s 7(2).

2 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

3 As to floating charges generally see COMPANIES vol 15 (2009) PARA 1269 et seq.

4 Administration of Justice Act 1977 s 7(1).

5 Ie under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

6 Ie under the Drug Trafficking Act 1994 Pt I (ss 1-41) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

7 See the Criminal Justice Act 1988 s 172(1); the Drug Trafficking Act 1994 s 68(1); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

8 See PARA 361 post. As to the enforcement of external confiscation orders in respect of the realisable proceeds of crime see the Criminal Justice Act 1988 ss 94-97 (as amended); the Drug Trafficking Act 1994 ss 37-40 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

UPDATE

309-312 Appointment by the Court

Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(i) Jurisdiction/313. General equitable jurisdiction.

(2) APPOINTMENT BY THE COURT

(i) Jurisdiction

313. General equitable jurisdiction.

The High Court has a statutory jurisdiction to appoint a receiver by an interlocutory or final order in all cases in which it appears to the court to be just and convenient to do so¹. Any such order may be made either unconditionally or on such terms and conditions as the court thinks just². The appointment may be made either before or after judgment, and a fortiori by the judgment itself or at the hearing of the action³. The jurisdiction to appoint a receiver, formerly exercised by the Court of Chancery⁴, thus now extends to all divisions of the High Court⁵, to the Court of Appeal⁶, and to county courts as regards causes of action within the limits of county court jurisdiction⁷. A receiver may not be appointed in respect of any money due or accruing from the Crown⁸. No appointment can be made where Parliament has expressly conferred the duties and responsibilities in question on a particular body⁹.

1 Supreme Court Act 1981 s 37(1), replacing the Supreme Court of Judicature (Consolidation) Act 1925 s 45(1), which restricted the jurisdiction to interlocutory orders, and used the phrase 'just or convenient', as to the meaning of which see CIVIL PROCEDURE vol 11 (2009) PARA 349. See also *S v S* (1973) Times, 23 June, where a receiving order was made as the most appropriate remedy against a husband who persistently defaulted in maintenance payments, although there was no reported precedent in the Family Division or its predecessor, the Probate, Divorce and Admiralty Division, for making such an order. No appointment can be made where Parliament has expressly conferred duties and responsibilities on a particular body: see note 9 infra. See also CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq; EQUITY vol 16(2) (Reissue) PARAS 487-488.

2 Supreme Court Act 1981 s 37(2).

3 *Beddow v Beddow* (1878) 9 ChD 89 at 93; *Anglo-Italian Bank v Davies* (1878) 9 ChD 275 at 286, CA; *Re Francke, Drake v Francke* (1888) 57 LJ Ch 437; *Re Prytherch, Prytherch v Williams* (1889) 42 ChD 590 at 600; and see *Smith v Cowell* (1880) 6 QBD 75, CA; *Easton & Co v Nar Valley Drainage Comrs* (1892) 8 TLR 649 (mandamus); *Edwards & Co v Picard* [1909] 2 KB 903 at 907, CA.

4 As to the jurisdiction in equity to appoint receivers see EQUITY vol 16(2) (Reissue) PARAS 487-488.

5 See the Supreme Court Act 1981 s 19(2)(b).

6 An original motion before the Court of Appeal for the appointment of a receiver may be made by the special leave of the court: see the Supreme Court Act 1981 ss 15(3), 16(1), 49; RSC Ord 59 rr 1, 1A, 10; and the Supreme Court Practice 1997 para 59/1A/25. See also *Brenan v Preston* (1852) 2 De GM & G 813 (Court of Appeal in Chancery); *Chaplin v Young* (1862) 6 LT 97 (Court of Appeal in Chancery); *Hyde v Warden* (1876) 1 Ex D 309, CA.

7 See PARA 315 post.

8 As to non-appointment in respect of debts due from the Crown see PARA 347 post.

9 *Parker v Camden London Borough Council, Newman v Camden London Borough Council* [1986] Ch 162, [1985] 2 All ER 141, CA (the court would not intervene by appointing a receiver to manage housing which Parliament had charged the local authority to maintain).

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, subsequently revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

313 General equitable jurisdiction

NOTES 1, 2, 5, 6--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(i) Jurisdiction/314. Exercise of jurisdiction in the High Court.

314. Exercise of jurisdiction in the High Court.

Of the three divisions of the High Court, it is still in the Chancery Division, as representing the practice of the old Court of Chancery¹, that the general jurisdiction to appoint a receiver is most frequently exercised². Since the transfer of contentious probate jurisdiction to the Chancery Division³, it is also that division which exercises the statutory jurisdiction⁴ to appoint an administrator pending suit⁵ where probate proceedings are pending⁶.

Before the transfer of jurisdiction from the Probate Division⁷ the Chancery Court would not, in the absence of special circumstances⁸, entertain an application for the appointment of a receiver if probate proceedings were pending, and would not entertain such an application at all once an administrator pending suit had been appointed in probate proceedings⁹. Where no probate proceedings were pending, however, a receiver might still be appointed in a creditor's administration action in the Chancery Division¹⁰ if the appointment had been claimed by the writ¹¹, even if probate proceedings were commenced after the motion for a receiver had been launched¹². The Probate Division would appoint an administrator pending suit after the appointment of a receiver in Chancery¹³, but would not appoint any person other than the Chancery receiver, except for special reasons¹⁴. On such an appointment being made, the Chancery Division would discharge its receiver (thus avoiding any conflict of jurisdiction), but would retain some control over him in his capacity as administrator, making such orders on him as it might think proper, for example for payment of particular debts¹⁵.

Now that either appointment may be made in the Chancery Division, the same principles are applicable where there is any question as to whether a receiver or an administrator pending suit should be appointed¹⁶, but such questions are less likely to arise than they were when the two jurisdictions were exercisable by different courts, and in practice it is thought unlikely that the appointment (or continuation in office) of a receiver will be considered appropriate where there is jurisdiction to appoint an administrator pending suit¹⁷.

In the Family Division, receivers may sometimes be appointed by way of equitable execution in divorce cases¹⁸, and may be appointed in other cases¹⁹. In the Queen's Bench Division, receivers are appointed by way of equitable execution²⁰, but seldom in other cases²¹. In Admiralty cases, a receiver has been appointed in an action of co-ownership at the instance of one of two co-owners²², and also in an action by an equitable mortgagee of ship and freight²³.

1 As to this practice see EQUITY vol 16(2) (Reissue) PARAS 487-488.

2 A master of the Chancery Division may appoint a receiver by way of equitable jurisdiction: see RSC Ord 51 r 2.

3 See the Supreme Court Act 1981 s 61(1), Sch 1 para 1(h) (replacing the Supreme Court of Judicature (Consolidation) Act 1925 s 56(1)(bb) (repealed)); and EXECUTORS AND ADMINISTRATORS.

4 The jurisdiction under the Supreme Court Act 1981 s 117 (replacing the Supreme Court of Judicature (Consolidation) Act 1925 s 163, which replaced the Court of Probate Act 1857 ss 70, 71). The power now extends to real estate: see EXECUTORS AND ADMINISTRATORS.

5 *Horrell v Witts and Plumley* (1866) LR 1 P & D 103; *Taylor v Taylor* (1881) 6 PD 29; *Salter v Salter* [1896] P 291, CA; *Re Messiter-Terry's Goods, Mathew v Tooze* (1908) 24 TLR 465; *Re Shorter, Shorter v Shorter* [1911] P 184.

6 Proceedings on a caveat are not sufficient to found the jurisdiction: see *Salter v Salter* [1896] P 291, CA; and EXECUTORS AND ADMINISTRATORS.

7 As to this transfer of jurisdiction see note 3 supra.

8 *Barr v Barr* [1876] WN 44; *Re Wright, Morrison v Jones* (1888) 32 Sol Jo 721, where a receiver was appointed by the vacation judge in an urgent case; *Re Evans, Evans v Evans* (1890) 15 PD 215, where the probate proceedings had been unduly delayed and notice of trial withdrawn. See also *Re Ivory, Hankin v Turner* (1878) 10 ChD 372; *Re Green, Green v Knight* [1895] WN 69; para 483 post; and EXECUTORS AND ADMINISTRATORS. Formerly, the Court of Chancery frequently appointed receivers in such cases (*Watkins v Brent* (1835) 1 My & Cr 97; *Rendall v Rendall* (1841) 1 Hare 152; *Bellew v Bellew* (1865) 4 Sw & Tr 58 at 62), although less frequently after the passing of the Court of Probate Act 1857 s 70 (repealed with savings) (see note 3 supra) (*Veret v Duprez* (1868) LR 6 Eq 329). A receiver might also have been appointed where probate proceedings were impending although not actually commenced: *Jones v Jones* (1817) 3 Mer 161; *Grimston v Turner* (1870) 22 LT 292.

9 *Veret v Duprez* (1868) LR 6 Eq 329.

10 *Re Baker, Giddings v Baker* (1882) 26 Sol Jo 682; *Re Cleaver's Estate* [1905] P 319. See also EXECUTORS AND ADMINISTRATORS.

11 *Re Wenge, Walter's Non-Inflammable Cellolite Ltd v Wenge* [1911] WN 129. See also PARA 326 post.

12 *Re Oakes, Oakes v Porcheron* [1917] 1 Ch 230. The parties interested in obtaining representation should be before the court: *Re Henderson, Macleod v Lane* (1886) 2 TLR 322.

13 *Tichborne v Tichborne, ex p Norris* (1869) LR 1 P & D 730; *Re Evans, Evans v Evans* (1890) 15 PD 215; *Re Cleaver's Estate* [1905] P 319.

14 *Tichborne v Tichborne, ex p Norris* (1869) LR 1 P & D 730; and see *Re Evans, Evans v Evans* (1890) 15 PD 215.

15 *Tichborne v Tichborne, ex p Norris* (1869) LR 1 PD 730; and see EXECUTORS AND ADMINISTRATORS.

16 The procedure on applications is similar: see RSC Ord 30; and PARA 321 post; RSC Ord 76 r 14, applying Ord 30 rr 2, 4, 6. See further PARA 445 et seq post.

17 As to the exercise of jurisdiction see EXECUTORS AND ADMINISTRATORS.

18 As to the appointment of receivers in divorce proceedings see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 647 t seq.

19 *S v S* (1973) Times, 23 June.

20 As to equitable execution see CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq. This remedy is now rarely used in practice: for a recent example see *Soinco SACI v Novokuznetsk Aluminium Plant* [1997] 3 All ER 523, [1998] 2 WLR 334.

21 As to the limited jurisdiction of a master in the Queen's Bench Division and of a district judge in the Family Division see RSC Ord 32 r 11; Ord 51 r 2; and CIVIL PROCEDURE vol 11 (2009) PARA 46; CIVIL PROCEDURE vol 12 (2009) PARA 1699.

22 *The Ampthill* (1880) 5 PD 224. See also PARA 338 post.

23 *The Faust* (1887) 56 LT 722, CA; and see *The Edderside* (1887) 31 Sol Jo 744.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

314 Exercise of jurisdiction in the High Court

NOTES 3, 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(i) Jurisdiction/315. Exercise of jurisdiction in county courts.

315. Exercise of jurisdiction in county courts.

Subject to the prescribed exceptions¹, in any proceedings in a county court the court may make any order which could be made by the High Court if the proceedings were in the High Court². A county court thus has jurisdiction to appoint a receiver in cases before it, by an interlocutory or final order, wherever it appears to the court to be just and convenient to do so³.

The power of the county court to appoint a receiver by way of equitable execution⁴ operates in relation to all legal estates and interests in land⁵. That power may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land⁶ for the purpose of enforcing the judgment, decree, order or award in question and is in addition to and not in derogation of any power of the court to appoint a receiver in proceedings for enforcing such a charge⁷.

1 Ie subject to regulations made under the County Courts Act 1984 s 38(3)-(7) (s 38 substituted by the Courts and Legal Services Act 1990 s 3); see the County Court Remedies Regulations 1991, SI 1991/1222 (amended by SI 1995/206); and COURTS. A county court is also not empowered to order mandamus, certiorari or prohibition: see the County Courts Act 1984 s 38(3)(a) (as so substituted).

2 Ibid s 38(1) (as substituted: see note 1 supra).

3 See ibid s 38(1), (2) (as substituted: see note 1 supra); and see also the Supreme Court Act 1981 s 37(1); and PARA 313 ante.

4 A county court has power to appoint a receiver of the rents and profits of an equity of redemption by way of equitable execution, notwithstanding that it could not have issued the writ of elegit (now defunct) which, under the old practice of the High Court, was a necessary preliminary to the appointment: *R v Selfe* [1908] 2 KB 121.

5 County Courts Act 1984 s 107(1).

6 Ie under the Charging Orders Act 1979 s 1 (as amended): see CIVIL PROCEDURE vol 12 (2009) PARA 1467 et seq.

7 County Courts Act 1984 s 107(2). Where an order under the Charging Orders Act 1979 s 1 (as amended) imposing a charge for the purpose of enforcing a judgment, decree, order or award has been registered under the Land Charges Act 1972 s 6 (as amended), s 6(4) (as amended) (which provides that, amongst other things, an order appointing a receiver and any proceedings pursuant to the order or in obedience to it are void against a purchaser unless the order is for the time being registered under s 6 (as amended)), does not apply to an order appointing a receiver made either in proceedings for enforcing the charge or by way of equitable execution of the judgment, decree, order or award or, as the case may be, of so much of it as requires payment of moneys secured by the charge: County Courts Act 1984 s 107(3).

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

315 Exercise of jurisdiction in county courts

NOTE 1--SI 1991/1222 further amended: SI 2002/439.

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(i) Jurisdiction/316. Exercise of jurisdiction in district registries and arbitrations and by justices.

316. Exercise of jurisdiction in district registries and arbitrations and by justices.

A receiver may be appointed in an action commenced in a district registry¹ and there is jurisdiction to appoint a receiver over property which is the subject matter of an arbitration². In certain cases justices have jurisdiction to appoint receivers³.

1 See the Supreme Court Practice 1997 para 32/23-24/14. It was formerly held that there was no general jurisdiction to appoint a receiver in a district registry (*Walker v Robinson* (1876) 34 LT 229; *Re Smith, Hutchinson v Ward* (1877) 6 ChD 692; *Re Capper, Robertson v Capper* (1878) 26 WR 434), except by way of equitable execution (as to which see RSC Ord 51).

2 See the Arbitration Act 1996 s 44(2)(e); and ARBITRATION vol 2 (2008) PARA 1254.

3 As to such jurisdiction see PARA 320 post.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(i) Jurisdiction/317. Exercise of jurisdiction in respect of realisable proceeds of crime.

317. Exercise of jurisdiction in respect of realisable proceeds of crime.

The jurisdiction to appoint a receiver under the Criminal Justice Act 1988¹ is exercisable in the High Court², while the similar jurisdiction under the Drug Trafficking Act 1994³ is exercisable in the High Court or a county court⁴.

1 See under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended); see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

2 See *ibid* ss 77(8), 80(1), (2) (s 80(1) as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq. See also RSC Ord 115 r 23.

3 See under the Drug Trafficking Act 1994 Pt I (ss 1-41) (as amended); see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

4 See *ibid* ss 26(7), 29(1), (2); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq. See also RSC Ord 115 r 8(1), applying Ord 30 rr 2-8; and CCR Ord 32 r 3(1), (2), applying RSC Ord 30 rr 3-8.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

317-318 Exercise of jurisdiction in respect of realisable proceeds of crime, Application by party to an action

Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/A. ENTITLEMENT AND PRACTICE/318. Application by party to an action.

(ii) Application for Appointment of Receiver

A. ENTITLEMENT AND PRACTICE

318. Application by party to an action.

An application for the appointment of a receiver under the Supreme Court Act 1981¹ must, in general, be made in a properly constituted action. The application may be made by any party to the action, or, it would seem, by any person served with notice of, or attending any proceeding in, the action². An application under the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 may not, however, be made by or on behalf of the defendant³.

1 le under the Supreme Court Act 1981 s 37(1): see PARA 313 ante.

2 See *Topping v Searson* (1862) 6 LT 449. For these purposes, 'action' means any civil proceedings commenced by writ or in any other manner prescribed by rules of court; and 'party', in relation to any proceedings, includes any person who pursuant to or by virtue of rules of court or any other statutory provision has been served with notice of, or has intervened in, those proceedings: see the Supreme Court Act 1981 s 151(1); and CIVIL PROCEDURE.

3 See PARA 309 notes 12-13 ante. As to applications by the prosecutor see RSC Ord 115 rr 6, 23.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

317-318 Exercise of jurisdiction in respect of realisable proceeds of crime, Application by party to an action

Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002. See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

318 Application by party to an action

TEXT AND NOTES 1, 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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319. Applications on behalf of persons under disability.

A legal estate in land can no longer be vested in a minor¹; and the practice of applying on petition for the appointment of a receiver to protect a minor's property, which was at one time frequent², is now obsolete. The application for a receiver is now made in an action to which the trustees are parties³.

Receivers of the income of a mentally disordered person may also be appointed under the jurisdiction of the Court of Protection on summons in chambers without suit⁴.

1 Law of Property Act 1925 s 1(6). The age of majority is now 18: see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 1.

2 *Kiffin v Kiffin* (prior to 1721) cited in 1 P Wms at 705; *Dillon v Lady Mount Cashell* (1727) 4 Bro Parl Cas 306, HL; *Bridges v Hales* (1729) Mos 108 at 111; *Re Cormicks, Minors* (1840) 2 I Eq R 264; *Whitelaw v Sandys* (1848) 12 I Eq R 393.

3 Alternatively application may be made under the Trustee Act 1925 s 53: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 71.

4 See eg *Re Browne* [1894] 3 Ch 412, CA; and the Mental Health Act 1983 ss 96-98. For the specific power to appoint a receiver which is now exercised frequently see s 99; and MENTAL HEALTH vol 30(2) (Reissue) PARA 704. As to the practice where a mentally disordered person is out of the jurisdiction see *Pélagrin v Coutts & Co* [1915] 1 Ch 696.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/A. ENTITLEMENT AND PRACTICE/320. Applications by mortgagees of companies and other public undertakings.

320. Applications by mortgagees of companies and other public undertakings.

In the case of companies carrying on undertakings of a public nature¹, mortgagees and holders of debenture stock may, in certain circumstances, apply to two justices for the appointment of a receiver without commencing an action².

1 As to the power of a judgment creditor of a railway company to obtain the appointment of a receiver see the Railway Companies Act 1867 s 4 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 15. As to railway administration orders and the appointment of administrative receivers (or, in the case of foreign companies, receivers) thereunder see the Railways Act 1993 ss 59-62, Sch 6; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 187-189.

2 See the Companies Clauses Consolidation Act 1845 ss 53, 54; the Commissioners Clauses Act 1847 ss 86, 87; the Companies Clauses Act 1863 ss 25, 26; and COMPANIES vol 15 (2009) PARAS 1749, 1759.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/A. ENTITLEMENT AND PRACTICE/321. Practice.

321. Practice.

In the Queen's Bench Division, the application for the appointment of a receiver is made by summons at chambers¹.

In the Chancery Division, the application may be made by motion² in open court or by summons at chambers³. In an action by creditors or beneficiaries against executors who have not yet proved or against persons entitled to a grant of letters of administration, the proceedings must be begun by writ, not originating summons⁴.

When a plaintiff suing on behalf of a class obtains an order for a receiver, a member of the class who is served with formal notice of a judgment ought not to acknowledge service but, if he desires to attend the proceedings, either generally or in regard to any particular matter, he should apply by summons for leave⁵. He is not allowed to intervene simply by appealing against the order⁶.

It is not necessary that the appointment of a receiver should have been claimed by the writ or originating summons, or even by the statement of claim⁷, unless such appointment is a substantial part of the relief sought⁸. Leave to amend the writ will be given if necessary⁹. Similarly a receiver may be appointed in the Court of Appeal, even though the appointment has not been asked for in the court below¹⁰.

In a county court, an application for the appointment of a receiver may be made before, at or after the trial or hearing of any proceedings¹¹.

An application for an ancillary or incidental injunction may be joined with the application for the appointment of a receiver¹². Application may be made ex parte on affidavit for an immediate injunction restraining the owner from assigning, charging or otherwise dealing with the property over which an appointment is sought, until the application for the appointment has been heard¹³.

1 RSC Ord 30 r 1(1).

2 RSC Ord 30 r 1(1).

3 RSC Ord 30 r 1(1). See the Supreme Court Practice 1997 paras 30/1/5, 32/14/2. As to equitable execution see *Re Hartley, Nuttall v Whittaker* (1892) 66 LT 588; RSC Ord 51; and CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq.

4 *Re Sutcliffe, Jackman v Sutcliffe, Re Sutcliffe, Houghton v Sutcliffe* [1942] Ch 453, sub nom *Jackman v Sutcliffe, Houghton v Sutcliffe* [1942] 2 All ER 296; and see EXECUTORS AND ADMINISTRATORS.

5 See *Re W Mate & Sons Ltd, Wilkes v W Mate & Sons Ltd* [1920] 1 Ch 551 at 561-562.

6 *Watson v Cave* (1881) 17 ChD 19, CA; *Fraser v Cooper, Hall & Co* (1882) 21 ChD 718; *Debenture Corp v De Murrieta & Co Ltd* (1892) 8 TLR 496. It appears that the proper course is to apply to the court below to be made a defendant to the action.

7 *Malcolm v Montgomery* (1824) 2 Mol 500; *Osborne v Harvey* (1841) 1 Y & C Ch Cas 116; *Bowman v Bell* (1844) 14 Sim 392; *Wright v Vernon* (1855) 3 Drew 112; *Brooker v Brooker* (1857) 3 Sm & G 475 at 477; *Salt v Cooper* (1880) 16 ChD 544, CA.

8 *Colebourne v Colebourne* (1876) 1 ChD 690.

9 *Re Lloyd, Allen v Lloyd* (1879) 12 ChD 447, CA.

10 As to the appointment of a receiver in the Court of Appeal see PARA 313 text and note 6 ante.

11 CCR Ord 32 r 1(1).

12 RSC Ord 30 r 1(2); CCR Ord 32 r 1(2).

13 See RSC Ord 30 r 1(3), (4); CCR Ord 32 r 1(3), (4). In a county court, the district judge has power to grant an injunction if, and only so far as, it is ancillary or incidental to an order for the appointment of a receiver by way of execution, ie a receiver appointed by way of equitable execution in relation either to an equitable interest or to a legal interest or estate in land: CCR Ord 32 r 1(4).

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

321 Practice

TEXT AND NOTES--The court may now appoint a receiver (1) before proceedings have started; (2) in existing proceedings; or (3) on or after judgment: CPR 69.2(1) (Pt 69 added by SI 2002/2058). A receiver must be an individual: CPR 69.2(2) (as added). The court may at any time (a) terminate the appointment of a receiver; and (b) appoint another receiver in his place: CPR 69.2(3) (as added). An application for the appointment of a receiver (i) may be made without notice; and (ii) must be supported by written evidence: CPR 69.3 (as added). An order appointing a receiver must be served by the party who applied for it on (A) the person appointed as receiver; (B) unless the court orders otherwise, every other party to the proceedings; and (c) such other persons as the court may direct: CPR 69.4 (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added). For general supplementary provision see *Practice Direction--Court's Power to Appoint a Receiver* PD 69 paras 1.1-6.3.

The receiver may apply to the court at any time for directions to assist him in carrying out his function as a receiver: CPR 69.6(1) (as added). The court, when it gives directions, may also direct the receiver to serve on any person (aa) the directions; and (bb) the application for directions: CPR 69.6(2) (as added). See also *Practice Direction--Court's Power to Appoint a Receiver* PD 69 paras 8.1-8.3.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/B. TIME FOR MAKING APPLICATION/322. Need for a pending suit.

B. TIME FOR MAKING APPLICATION

322. Need for a pending suit.

As a rule the court cannot appoint a receiver unless there is a pending suit¹. Caveat proceedings in a probate action do not constitute a pending suit². When the defendant to a contemplated action is out of the jurisdiction, and the writ cannot in consequence be issued without leave³, it is conceived that, if a case of emergency is made out, a receiver may be appointed on an ex parte application and leave given for the issue of the writ by the same order⁴.

1 *Salter v Salter* [1896] P 291, CA. For exceptions to the rule, eg as to mentally disordered persons, see PARAS 319-320 ante. As to the appointment of a receiver under the Criminal Justice Act 1988 see ss 77(8), 80(2); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq; and as to the appointment of a receiver under the Drug Trafficking Act 1994 see s 26 (as amended), s 29; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

2 *Salter v Salter* [1896] P 291, CA; and see EXECUTORS AND ADMINISTRATORS.

3 See RSC Ord 6 r 7(1); and CIVIL PROCEDURE.

4 *Young v Brassey* (1875) 1 ChD 277, where an injunction was so granted.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

322 Need for a pending suit

NOTE 1--1988 Act ss 77(8), 80(2) and 1994 Act ss 26, 29 replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/B. TIME FOR MAKING APPLICATION/323. Service of writ or summons before appointment.

323. Service of writ or summons before appointment.

The writ or originating summons must as a rule be served on the defendant before a receiver can be appointed¹. A receiver is not usually appointed if the persons principally interested in the property to be affected are not before the court², but if the defendant has absconded or if for any other reason it is found impossible to serve him, or if there is imminent danger of the property being lost, a receiver may be appointed before service on an ex parte application supported by affidavit³.

1 *Stratton v Davidson* (1830) 1 Russ & M 484; *Brown v Blount* (1830) 2 Russ & M 83.

2 *Shaw v Shore* (1835) 5 LJ Ch 79; and see also *Ellis and Everard Ltd v Count Hochberg* (1914) 58 Sol Jo 809; *J Wild & Co Ltd v F Krupps Akt* (1914) 58 Sol Jo 867 (cases of alien enemies).

3 *Pitcher v Helliard* (1781) 2 Dick 580; *Maguire v Allen* (1809) 1 Ball & B 75; *Quin v Gunn* (1823) 1 Hog 75; *Tanfield v Irvine* (1826) 2 Russ 149; *Gibbins v Mainwaring* (1837) 9 Sim 77; *Noad v Backhouse* (1843) 2 Y & C Ch Cas 529; *Barrett v Mitchell* (1843) 5 I Eq R 501; *Dowling v Hudson* (1851) 14 Beav 423; *London and South Western Bank v Facey* (1871) 24 LT 126; *Re H's Estate, H v H* (1875) 1 ChD 276; *Crane v Jullion* (1876) 2 ChD 220; and see *Colebourne v Colebourne* (1876) 1 ChD 690; *Re Pountain* (1888) 37 ChD 609, CA (a case of a mentally disordered person); *Re Messiter-Terry's Goods, Mathew v Tooze* (1908) 24 TLR 465, where a receiver was appointed before citation in a probate action.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/B. TIME FOR MAKING APPLICATION/324. Notice of application.

324. Notice of application.

After service of the writ or summons, notice should be given, if possible, to the defendant of any intended application for a receiver. A receiver is not appointed on an ex parte motion, either before or after acknowledgment of service, in the absence of special circumstances¹; and ex parte applications for the appointment of a receiver by way of equitable execution² are not granted except in cases of special emergency³. Even if a defendant has not acknowledged service, an attempt should still be made to serve him personally with notice of any motion or summons for a receiver⁴.

In the case of an application to appoint a receiver under Part VI of the Criminal Justice Act 1988⁵ or under the Drug Trafficking Act 1994⁶, notice must be served, not less than seven days before the date fixed for the hearing of the summons, on the defendant and on any person holding any interest in the realisable property to which the application relates⁷.

1 *Meaden v Sealey* (1849) 6 Hare 620; *Caillard v Caillard* (1858) 25 Beav 512; *Steer v Steer* (1864) 2 Drew & Sm 311; *Blackett v Blackett* (1871) 24 LT 276; *Taylor v Eckersley* (1876) 2 ChD 302, CA; *Piperno v Harmston* (1886) 3 TLR 219 at 220, CA, per Lindley LJ; *Re Patrick, Bills v Tatham* (1888) 32 Sol Jo 798; *Re Connolly Bros Ltd, Wood v Connolly Bros Ltd* [1911] 1 Ch 731 at 742, CA.

2 As to equitable execution and the appointment of a receiver by way of equitable execution see CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq.

3 *Lucas v Harris* (1886) 18 QBD 127 at 134, CA; *Re Potts, ex p Taylor* [1893] 1 QB 648 at 661-662, CA; *Minter v Kent, Sussex and General Land Society* (1895) 72 LT 186, CA; *Re Goudie, ex p Official Receiver* [1896] 2 QB 481; and see *Lloyds Bank Ltd v Medway Upper Navigation Co* [1905] 2 KB 359, CA. *Fuggle v Bland* (1883) 11 QBD 711, DC, no longer represents the practice on this point. See also CIVIL PROCEDURE vol 12 (2009) PARA 1502 et seq.

4 In an injunction case, where leave to serve before entry of appearance had been given, service of a copy of the notice on one of two defendants was held sufficient: *Jarvis v Hemmings* [1912] WN 33.

5 Ie under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

6 Ie under the Drug Trafficking Act 1994 s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

7 See RSC Ord 115 rr 7(1), (2)(a), (b), 23.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

324 Notice of application

NOTES 5, 6--Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

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325. Application by defendant.

Although a plaintiff may be able in an urgent case to obtain the appointment of a receiver even before service of the writ or summons, a defendant may only apply after he has acknowledged service, and then only on notice to the plaintiff¹; nor may he apply without first filing a counterclaim or a writ in a cross-action, unless his claim to relief arises out of the plaintiff's cause of action or is incidental to it².

No application may be made by or on behalf of the defendant for the appointment of a receiver in order to preserve assets intended for the satisfaction of a confiscation order³.

1 *Daw v Herring* [1892] 1 Ch 284. It is submitted that in cases of special urgency he may apply ex parte after acknowledging service: see *Hick v Lockwood* [1883] WN 48 (not cited in *Daw v Herring* supra); and the Supreme Court Practice 1997 para 29/1/8.

2 *Carter v Fey* [1894] 2 Ch 541, CA, distinguishing *Sargant v Read* (1876) 1 ChD 600 and *Porter v Lopes* (1877) 7 ChD 358. See also *Barlow v Gains* (1845) 8 Beav 329; *Robinson v Hadley* (1849) 11 Beav 614; *Collison v Warren* [1901] 1 Ch 812, CA; *Hardy v Hardy* (1917) 62 Sol Jo 142.

3 See *Re M (Restraint Order)* [1992] QB 377, [1992] 1 All ER 537. As to confiscation orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq. As to application by the prosecutor see PARA 318 note 3 ante.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(ii) Application for Appointment of Receiver/B. TIME FOR MAKING APPLICATION/326. Effect of death.

326. Effect of death.

Although the death of a party does not cause abatement¹, a receiver cannot be appointed over the property of a deceased defendant until some duly constituted representative² is before the court³. In an administration action, however, a receiver may be appointed, notwithstanding the death of the sole defendant and personal representatives, on the plaintiff's undertaking to obtain forthwith the appointment of himself or some other person as administrator de bonis non⁴.

Where the assets of a deceased person are in jeopardy, a receiver may be appointed before a grant of probate or administration, the executor appointed by the will or a person entitled to a grant being made defendant⁵; but the appointment will not be made if there is a probate action pending⁶, unless the motion for a receiver has been launched before the commencement of those proceedings⁷.

1 See RSC Ord 15 r 7; and CIVIL PROCEDURE; EXECUTORS AND ADMINISTRATORS.

2 If there is no personal representative, a person may be appointed to represent the estate under RSC Ord 15 r 15.

3 *Re Shephard, Atkins v Shephard* (1889) 43 ChD 131, CA, doubting *Manchester and Liverpool District Banking Co v Parkinson* (1888) 22 QBD 173, CA. See also *Penney v Todd* (1878) 26 WR 502.

4 *Re Parker, Cash v Parker* (1879) 12 ChD 293; *Re Clark, Clark v Clark* [1910] WN 234; and see EXECUTORS AND ADMINISTRATORS.

5 *Re Wenge, Walter's Non-Inflammable Cellolite Ltd v Wenge* [1911] WN 129.

6 *Re Parker, Cash v Parker* (1879) 12 ChD 293.

7 *Re Oakes, Oakes v Porcheron* [1917] 1 Ch 230. See also PARA 314 ante.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

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327. When application may be made after judgment or order.

A receiver cannot be appointed in a foreclosure action after an order for foreclosure absolute, for this brings the proceedings to an end as far as the court is concerned¹, but it is otherwise in the case of actions for money demands, where the process of the court may still be invoked to enforce what is on the face of it a final judgment²; and a receiver may be appointed after an order for administration or for foreclosure nisi if a proper case is made out³.

1 *Wills v Luff* (1888) 38 ChD 197. Cf *Ingham v Sutherland* (1890) 63 LT 614.

2 *Salt v Cooper* (1880) 16 ChD 544, CA.

3 *Bowman v Bell* (1844) 14 Sim 392; *Thomas v Davies* (1847) 11 Beav 29; *Re Bywater's Estate, Sargent v Johnson* (1855) 1 Jur NS 227; *Brooker v Brooker* (1857) 3 Sm & G 475; *Weston v Levy* [1887] WN 76.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

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C. EVIDENCE IN SUPPORT

328. Affidavits in support.

The affidavits in support of an application for a receiver should show the nature of the applicant's interest in the property, unless there is already on the pleadings an admission of title sufficient to give the applicant a locus standi¹, and the grounds on which he alleges that it is just and convenient that a receiver should be appointed². It is conceived that it is no longer necessary that the evidence should be confined to allegations in the pleadings, if any³. If it is asked that a named person should be appointed, an affidavit of his fitness for the post will also be required⁴. Misleading statements in the affidavit are a ground for discharge of the receiver⁵.

1 *Norway v Rowe* (1812) 19 Ves 144.

2 As to the appointment of receivers see PARA 330 et seq post.

3 As to the former practice see *Dawson v Yates* (1838) 1 Beav 301; *Cremen v Hawkes* (1845) 2 Jo & Lat 674; *Wright v Vernon* (1855) 3 Drew 112.

4 See *Re Hoyland Silkstone Colliery Co Ltd* (1883) 53 LJ Ch 352. Where a receiver proposed to be appointed under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq) or under the Drug Trafficking Act 1994 s 26 (as amended) or s 29 has been appointed receiver in other proceedings under the Act in question, there is no need for an affidavit of fitness to be sworn: see RSC Ord 115 rr 8(2), 23.

5 *Re Church Press Ltd, Victoria House Printing Co Ltd v Church Press Ltd* (1917) 116 LT 247.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

328 Affidavits in support

NOTES 5, 6--1988 Act Pt VI and 1994 Act ss 26, 29 replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

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329. Affidavits sworn before action.

An affidavit sworn before action is valueless, even though filed after issue of the writ¹, but the court sometimes makes an order on such an affidavit, the applicant undertaking to have it resworn and refiled²; and, exceptionally, when the defendant to a contemplated action is out of the jurisdiction and a writ cannot in consequence be issued without an application to the court³, an affidavit in support of the application may be read, entitled in the matter of the Supreme Court Act 1981 and of the contemplated action⁴.

- 1 *Silber v Lewin* (1889) 33 Sol Jo 757.
- 2 *Green v Prior* [1886] WN 50; *Re Abbott's Trade Mark No 8656* (1904) 48 Sol Jo 351.
- 3 See RSC Ord 6 r 7(1).
- 4 See *Young v Brassey* (1875) 1 ChD 277 (injunction).

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

329 Affidavits sworn before action

TEXT AND NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iii) Grounds of Appointment/330. Preservation of property.

(iii) Grounds of Appointment

330. Preservation of property.

In the exercise of its statutory power¹ the court appoints a receiver in many cases² in which the old Court of Chancery would not, as a matter of practice, have intervened³. In some cases, as in proceedings to enforce an equitable charge⁴, the appointment is made as a matter of course as soon as the applicant's right is established. In most cases, however, the appointment is discretionary, and in cases where the Court of Chancery had previously no jurisdiction to appoint a receiver the court does not exercise the statutory power conferred upon it⁵. Moreover the right sought to be invoked must be one justiciable in the English courts. Thus there is no jurisdiction to appoint a receiver in relation to an international body set up by a treaty not enacted into English law where the property or right sought to be preserved or enforced consists of claims by that body against its member states and the claims arise under the unenacted treaty and thus are not justiciable in the English courts⁶.

Apart from appointments by way of equitable execution⁷ or to enforce a charge⁸, the general ground on which the court appoints a receiver is ultimately in every case the protection or preservation of property for the benefit of persons who have an interest in it⁹. On this ground receivers are constantly appointed pending the trial of an action¹⁰ or pending the constitution of a legal representative of a deceased person¹¹, or, if necessary, pending a reference to arbitration¹² or the trial of an interpleader issue¹³, or pending proceedings in another court¹⁴.

A receiver may also be appointed pending an action for trespass¹⁵; or at the instance of a legal mortgagee¹⁶; or of the rents and profits of land vested in joint tenants, even though no case of

exclusion be made out¹⁷; or of the estate of a deceased person notwithstanding that no legal representative has been constituted and no probate proceedings are pending¹⁸; or at the instance of a judgment creditor notwithstanding that he has not taken advantage of the legal remedies open to him¹⁹, provided the circumstances render it just and convenient²⁰; or to enforce the payment of money into court²¹. A receiver may also be appointed at the instance of tenants of property where the landlord neither collects the rents due nor performs his repairing covenants and the property is deteriorating²².

In actions for the specific performance or rescission of contracts for the sale of land, and especially of mining property, a receiver, and if necessary a manager, is frequently appointed to preserve the property until the right is decided²³, and an unpaid vendor may have a receiver with a view to enforcing his lien²⁴. In a partnership action, the fact that the surviving partner is endeavouring to divert the goodwill of the business to himself is sufficient ground for the appointment of a receiver and manager at the instance of the representative of a deceased partner²⁵. Again, any plaintiff who has a right to be paid out of a particular fund is entitled to an injunction or a receiver to prevent that fund being dissipated so as to defeat his rights²⁶.

Where a restraint order²⁷ or confiscation order²⁸ is made under the Criminal Justice Act 1988 or the Drug Trafficking Act 1994, a receiver may be appointed to take possession of realisable property and to enforce any charge on such property²⁹.

Neither the provisions relating to restraint orders³⁰ nor the power conferred by the Supreme Court Act 1981 to appoint a receiver³¹ confer jurisdiction on the court to appoint a receiver to sell the realisable property of companies, when those companies have not themselves been charged with any offences; but if the relevant shareholder defendants control companies that are prima facie cloaks for fraudulent and criminal activity, the corporate veil can be lifted and the companies' assets can then be treated as held for the defendants and available to the receiver to sell³².

1 le under the Supreme Court Act 1981 s 37: see PARA 313 ante.

2 For the grounds of appointment in particular cases see eg COMPANIES vol 15 (2009) PARA 1362; PARTNERSHIP vol 79 (2008) PARA 162 et seq; TRUSTS vol 48 (2007 Reissue) PARAS 1073, 1095.

3 *Cummins v Perkins* [1899] 1 Ch 16 at 20, CA, per Lindley LJ. As to the former practice in equity see EQUITY vol 16(2) (Reissue) PARA 487.

4 *Re Crompton & Co Ltd, Player v Crompton & Co Ltd* [1914] 1 Ch 954.

5 *Holmes v Millage* [1893] 1 QB 551, CA; *Harris v Beauchamp Bros* [1894] 1 QB 801, CA; *Morgan v Hart* [1914] 2 KB 183, CA, where the property could be reached by writ of fieri facias but identity was difficult; and see *North London Rly Co v Great Northern Rly Co* (1883) 11 QBD 30, CA (injunction); *Kitts v Moore* [1895] 1 QB 253, CA (injunction); *Cummins v Perkins* [1899] 1 Ch 16 at 20, CA; *Willis v Cooper* (1900) 44 Sol Jo 698. See also *Maclaine Watson & Co Ltd v International Tin Council (No 2)* [1989] Ch 286, [1988] 3 All ER 257, CA. See also EQUITY vol 16(2) (Reissue) PARA 501.

6 *Maclaine Watson & Co Ltd v International Tin Council (No 2)* [1989] Ch 286, [1988] 3 All ER 257, CA.

7 As to such appointments see CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq.

8 *Curling v Marquis of Townshend* (1816) 19 Ves 628 at 633.

9 See *Wingfield v Wingfield* [1919] 1 Ch 462, CA, where an action in which an order for the appointment of a receiver had been obtained having been discontinued, a charging order for the costs of obtaining the appointment was refused.

10 *Free v Hinde* (1827) 2 Sim 7; *Richards v Goold* (1827) 1 Mol 22; *Tullett v Armstrong* (1836) 1 Keen 428; *Dawson v Yates* (1838) 1 Beav 301; *Kelly v Butler* (1839) 11 Eq R 435; *Bartley v Bartley* (1845) 9 Jur 224; *Bainbrigge v Bainbrigge* (1850) 20 LJ Ch 139; *Fripp v Chard Rly Co, Fripp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1853) 11 Hare 241; *White v Smale* (1856) 22 Beav 72; *Taylor v Eckersley* (1876) 2 ChD 302, CA; *Re Bechstein's Business Trusts, Berridge v Bechstein* (1914) 58 Sol Jo 864 (alien enemy firm). As to an action being not maintainable by an agent cf *Re Gaudig and Blum, Spalding v Lodde* (1915) 31 TLR 153.

- 11 *King v King* (1801) 6 Ves 172; *Wood v Hitchings* (1840) 2 Beav 289; *Owen and Gutch v Homan* (1853) 4 HL Cas 997 at 1032; *Nothard v Proctor* (1875) 1 ChD 4, CA; *Re Shephard, Atkins v Shephard* (1889) 43 ChD 131 at 132, CA; *Re Messiter-Terry's Goods, Mathew v Tooze* (1908) 24 TLR 465. See PARA 314 ante.
- 12 See the Arbitration Act 1996 s 44(2)(e); *Plews v Baker* (1873) LR 16 Eq 564 at 573; *Halsey v Windham* [1882] WN 108; *Compagnie du Senegal v Woods & Co* (1883) 53 LJ Ch 166; *Pini v Roncoroni* [1892] 1 Ch 633.
- 13 *Howell v Dawson* (1884) 13 QBD 67, DC.
- 14 *Brenan v Preston* (1852) 2 De GM & G 813 at 839-840; *Wright v Vernon* (1855) 3 Drew 112; *Transatlantic Co v Pietroni* (1860) John 604 (foreign court).
- 15 *Percy v Thomas* (1884) 28 Sol Jo 533, DC; *Cummins v Perkins* [1899] 1 Ch 16 at 20, CA.
- 16 As to such appointment see MORTGAGE vol 77 (2010) PARA 101 et seq.
- 17 *Porter v Lopes* (1877) 7 ChD 358; *Hills v Webber* (1901) 17 TLR 513, CA; and see *The Amphill* (1880) 5 PD 224 (co-owners of ship). In the case of land the legal interest of joint tenants is that of trustees of land: see the Law of Property Act 1925 s 36 (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq.
- 18 *Re Parker, Dearing v Brooks* (1885) 54 LJ Ch 694; *Re Dawson, Clarke v Dawson* (1906) 75 LJ Ch 201. See PARA 314 ante; and EXECUTORS AND ADMINISTRATORS.
- 19 *Bryant v Bull, Bull v Bryant* (1878) 10 ChD 153; *Re Watkins, ex p Evans* (1879) 13 ChD 252, CA; *Re Pope* (1886) 17 QBD 743, CA; *Re Whiteley, Whiteley v Learoyd* (1887) 56 LT 846; and see CIVIL PROCEDURE vol 12 (2009) PARA 1501 et seq.
- 20 *Manchester and Liverpool District Banking Co v Parkinson* (1888) 22 QBD 173, CA. As to the meaning of 'just and convenient' see PARA 313 note 1 ante.
- 21 *Stanger Leathes v Stanger Leathes* [1882] WN 71; *Re Coney, Coney v Bennett* (1885) 29 ChD 993; *Re Whiteley, Whiteley v Learoyd* (1887) 56 LT 846.
- 22 *Hart v Emelkirk Ltd* [1983] 3 All ER 15, [1983] 1 WLR 1289; applied in *Daiches v Bluelake Investments Ltd* (1985) 51 P & CR 51.
- 23 *Boehm v Wood* (1820) 2 Jac & W 236; *Stilwell v Wilkins* (1821) Jac 280; *Portman v Mill* (1839) 8 LJ Ch 161; *Gibbs v David* (1875) LR 20 Eq 373 (rescission); *Hyde v Warden* (1876) 1 Ex D 309, CA; *Cook v Andrews* [1897] 1 Ch 266 (rescission). See SPECIFIC PERFORMANCE vol 44(1) (Reissue) PARA 931.
- 24 *Munns v Isle of Wight Rly Co* (1870) 5 Ch App 414; *Earl of St Germans v Crystal Palace Rly Co* (1871) LR 11 Eq 568; *Williams v Aylesbury and Buckingham Rly Co* (1873) 28 LT 547; *Ware v Aylesbury and Buckingham Rly Co* (1873) 28 LT 893; *Boyle v Bettws Llantwit Colliery Co* (1876) 2 ChD 726; *Poole v Downes* (1897) 76 LT 110. A receiver will not be appointed against a railway company before judgment: *Latimer v Aylesbury and Buckingham Rly Co* (1878) 9 ChD 385, CA. An unpaid vendor of a business is entitled to indemnity against expense incurred in carrying it on pending completion: *Golden Bread Co Ltd v Hemmings* [1922] 1 Ch 162. This right, it is submitted, would entitle him to a receiver: see *Hyde v Warden* (1876) 1 Ex D 309, CA.
- 25 *Young v Buckett* (1882) 51 LJ Ch 504. However, a receiver will not generally be appointed at the instance of a retiring partner if it was contemplated that other partners would continue the partnership business after dissolution: *Sobell v Boston* [1975] 2 All ER 282, [1975] 1 WLR 1587. For the grounds on which a receiver may be appointed in a partnership action see PARTNERSHIP vol 79 (2008) PARA 162 et seq.
- 26 *Cummins v Perkins* [1899] 1 Ch 16 at 19, CA.
- 27 As to restraint orders see the Criminal Justice Act 1988 s 77 (as amended); the Drug Trafficking Act 1994 s 26 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.
- 28 As to confiscation orders see the Criminal Justice Act 1988 s 71 (as amended); the Drug Trafficking Act 1994 s 2; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.
- 29 See the Criminal Justice Act 1988 ss 77(8), 80(3); the Drug Trafficking Act 1994 ss 26(7), 29(3); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.
- 30 In the Criminal Justice Act 1988 s 77 (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

31 le under the Supreme Court Act 1981 s 37: see PARA 313 ante.

32 *Re H (restraint order: realisable property)* [1996] 2 All ER 391, sub nom *Hare v Customs and Excise Comrs* [1996] 11 LS Gaz R 29, CA.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

330 Preservation of property

TEXT AND NOTES 1, 31--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

TEXT AND NOTES 27-29--As to confiscation orders and restraint orders, see now the Proceeds of Crime Act 2002 Pt 2 (ss 6-91) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iii) Grounds of Appointment/331. Cases of disputed title.

331. Cases of disputed title.

In cases of disputed title to land, the former rule was that the court would not interfere with the party in possession unless his title was obviously defective¹ or was affected by some equity², or the rents were in danger of being lost³ or the property was in danger of destruction⁴. Now, however, an interlocutory application for a receiver by a person asserting a purely legal title will be entertained, and a receiver may be appointed if the court thinks that the plaintiff will probably succeed at the hearing and that, in all the circumstances of the case, the appointment is just and convenient⁵. In an action for recovery of land, the jurisdiction is exercised with great caution, and if the defendant is in occupation a receiver will only be appointed in special circumstances, as otherwise the substantive issue may in effect be determined by evidence only admissible on interlocutory application⁶; and a defendant in such an action may be deprived of the privilege of relying on his occupation without disclosing his title⁷.

The length of the defendant's possession⁸ and the position of the tenants (who might be called upon to pay their rents over again if the party in possession were not solvent⁹), will receive consideration. Similarly, a landlord suing to recover possession of demised premises for breach of covenant may obtain a receiver of the rents and profits pending trial if he shows a probability of success at the hearing and that the appointment is necessary to preserve the property, for example where there are licences which are endangered¹⁰.

1 *Metcalf v Pulvertoft* (1812) 1 Ves & B 180; *Earl of Fingal v Blake* (1828) 1 Mol 113 (subsequent proceedings (1829) 2 Mol 50); *Clark v Dew* (1829) 1 Russ & M 103.

2 *Podmore v Gunning* (1832) 5 Sim 485; *Clegg v Fishwick* (1849) 1 Mac & G 294. See also *Bainbrigge v Baddeley* (1850) 13 Beav 355 at 361 per Lord Langdale MR; *Berry v Keen* (1882) 51 LJ Ch 912, CA.

3 *Mordaunt v Hooper* (1756) Amb 311; and see also *Knight v Duplessis* (1749) 1 Ves Sen 324; *Clark v Dew* (1829) 1 Russ & M 103; *Lloyd v Lord Trimleston* (1829) 2 Mol 81; *Lancashire v Lancashire* (1845) 9 Beav 120.

4 See generally, *Ridgway v Roberts* (1844) 4 Hare 106 (disputed title to ship); *Dobbin v Adams* (1845) 8 I Eq R 157; *Fetherstone v Mitchell* (1846) 9 I Eq R 480; *Bainbridge v Baddeley* (1851) 3 Mac & G 413; *Earl Talbot v Hope Scott* (1858) 4 K & J 96; *Campbell v Campbell* (1864) 4 Macq 711, HL; *Carrow v Ferrior*, *Dunn v Ferrior* (1868) 3 Ch App 719; *Hitchen v Birks* (1870) LR 10 Eq 471; *Parkin v Seddons* (1873) LR 16 Eq 34.

5 *Crane v Jullion* (1876) 2 ChD 220; *Real and Personal Advance Co v M'Carthy and Smith* (1879) 40 LT 878; *Berry v Keen* (1882) 51 LJ Ch 912, CA; *John v John* [1898] 2 Ch 573, CA (distinguishing *Foxwell v Van Grutten* [1897] 1 Ch 64, CA).

6 *Marshall v Charteris* [1920] 1 Ch 520, CA, where the fact that the defendant disclosed only a shadowy title and was without means was held an insufficient reason for the exercise of the court's discretion to appoint a receiver.

7 *John v John* [1898] 2 Ch 573 at 580, CA.

8 *John v John* [1898] 2 Ch 573, CA; and see also *Jones v Jones* (1817) 3 Mer 161.

9 *John v John* [1898] 2 Ch 573, CA; and see also *Hitchen v Birks* (1870) LR 10 Eq 471.

10 *Gwatkin v Bird* (1882) 52 LQB 263, DC; *Charrington & Co Ltd v Camp* [1902] 1 Ch 386; *Leney & Sons Ltd v Callingham and Thompson* [1908] 1 KB 79, CA.

UPDATE

313-372 Appointment by the Court

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iii) Grounds of Appointment/332. Vacant or adverse possession.

332. Vacant or adverse possession.

If no one is in possession of the property the court will appoint a receiver almost as of course, to prevent a scramble and to preserve the property until the rights of the parties are ascertained¹; and, similarly, a receiver will be appointed in an urgent case to prevent a stranger to the suit from obtaining a title by adverse possession².

1 *Palmer v Wright* (1846) 10 Beav 234; *Owen and Gutch v Homan* (1853) 4 HL Cas 997 at 1032; *White v Smale* (1856) 22 Beav 72; *Earl Talbot v Hope Scott* (1858) 4 K & J 96.

2 *Thomas v Davies* (1847) 11 Beav 29.

UPDATE

313-372 Appointment by the Court

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RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iii) Grounds of Appointment/333. Appointment against executor.

333. Appointment against executor.

An executor will not be dispossessed on the mere ground of poverty¹, but the insolvency of an executor or administrator is a ground for the appointment of a receiver at the instance of either beneficiaries or creditors², and this is the case even if the insolvency occurs before the testator's death unless it is clearly shown that the testator was aware of the insolvency at the date of the will or deliberately refrained from altering his choice after knowledge of the circumstances. The court does not infer from the mere fact of the will not having been altered after the testator became aware of the executor's bankruptcy that the testator intended to entrust his estate to an insolvent executor³. A grant will not be withheld or impounded on the ground of jeopardy; accordingly, it will be necessary in such cases to apply for the appointment of a receiver⁴. Gross misconduct or personal disability on the part of an executor⁵, wasting or misapplication of the assets⁶, the retention of improper securities or other breach of duty⁷, circumstances pointing to fraud in obtaining the execution of the will⁸, admitted insufficiency of assets⁹, or even the fact of permanent residence abroad¹⁰, may also justify the appointment of a receiver.

1 *Hathornthwaite v Russel* (1740) 2 Atk 126; *Knight v Duplessis* (1749) 1 Ves Sen 324; *Anon* (1806) 12 Ves 4; *Howard v Papera* (1815) 1 Madd 142.

2 *Re Winsmore, ex p Ellis* (1742) 1 Atk 101; *Shore v Shore* (1859) 4 Drew 501; *Re Johnson, Steele v Cobham* (1866) 1 Ch App 325; *Gawthorpe v Gawthorpe* [1878] WN 91; *Re Hopkins, Dowd v Hawtin* (1881) 19 ChD 61, CA. Similarly it was held, before the passing of the Married Women's Property Act 1882, that if a married woman was appointed executrix, the insolvency of her husband (*Scott v Becher* (1817) 4 Price 346) or even his residence out of the jurisdiction (*Taylor v Allen* (1741) 2 Atk 213) afforded sufficient ground for the appointment of a receiver. As to the eligibility of insolvent persons to be appointed executors see EXECUTORS AND ADMINISTRATORS.

3 *Gladdon v Stoneman* (1808) 1 Madd 143n; *Langley v Hawk* (1820) 5 Madd 46; *Oldfield v Cobbett* (1835) 4 LJ Ch 271; *Stainton v Carron Co* (1854) 18 Beav 146.

4 *Re Moxley's Goods* [1916] 2 IR 145.

5 *Everett v Prythergch* (1841) 12 Sim 363 at 365; *Brooker v Brooker* (1857) 3 Sm & G 475 at 477; and see *Yetts v Palmer* (1863) 8 LT 528, where it was doubtful whether a power of sale was vested in the executor who had proved the will.

6 *Middleton v Dodswell* (1806) 13 Ves 266; and see also *Andrews v Powys* (1723) 2 Bro Parl Cas 504, HL; *Hathornthwaite v Russel* (1740) 2 Atk 126; *Dowling v Hudson* (1851) 14 Beav 423.

7 *Ball v Oliver* (1813) 2 Ves & B 96; *Richards v Perkins* (1838) 3 Y & C Ex 299 at 307.

8 *Andrews v Powys* (1723) 2 Bro Parl Cas 504, HL; *Rutherford v Douglas* (1822) 1 Sim & St 111n; *Hamilton v Girdleston* [1876] WN 202.

9 *Chalk v Raine* (1849) 18 LJ Ch 472.

10 *Westby v Westby* (1847) 2 Coop temp Cott 210; *Dickins v Harris* (1866) 14 LT 98; and see also *Pitcher v Helliard* (1781) 2 Dick 580; *Smith v Smith* (1853) 10 Hare, App II, lxxi.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iii) Grounds of Appointment/334. Appointment against trustees.

334. Appointment against trustees.

A receiver is appointed¹ in the case of a trustee refusing to act if all the acting trustees and beneficiaries consent to the appointment, but not otherwise². A receiver is also appointed on the application of any beneficiary³ if the appointment is required for the safety of the trust property or the due administration of the trust⁴, but not otherwise⁵. A receiver may be appointed against charity trustees in a suitable case⁶. The safety of the trust property and the due administration of the trust are deemed to be imperilled where the trustee has been guilty of losing or wasting or neglecting the trust property⁷ or of improperly disposing of it⁸, or of some other breach of trust⁹, or becomes a bankrupt¹⁰ or insolvent¹¹, or is out of the jurisdiction¹², or has been guilty of gross misconduct¹³. Trustees of the property of a trade union which was fined for contempt of court exported the union funds to another jurisdiction pursuant to the directions of the union's national executive committee so as to evade sequestration. The court removed the trustees ex parte from their trusteeship and appointed a receiver ex parte¹⁴. The order was later affirmed inter partes¹⁵. The fact that trustees are not holding an even hand, but are receiving rents on behalf of any of several claimants to the trust property, may justify the appointment of a receiver even before trial, if the applicant shows a prima facie title¹⁶. A receiver may also be appointed where a trustee undertakes an obligation inconsistent with his duty as such¹⁷, or where co-trustees disagree among themselves¹⁸ or act separately¹⁹. A trustee of leasehold property alleging that his co-trustees refuse to make any provision out of rents and profits for repairs may obtain the appointment of a receiver in the interests of remaindermen to preserve the lease from risk of forfeiture²⁰. Where persons are beneficially interested in land as joint tenants or tenants in common, the legal estate is vested in trustees of land²¹; the principles on which a receiver is appointed against trustees therefore apply.

Where there is a co-trustee able and willing to act alone, an injunction restraining the defaulting or unfit trustee from intermeddling in the trust may be sufficient without the appointment of a receiver²².

1 Where the circumstances so require, the appointment is accompanied by an injunction restraining the trustee from intermeddling with the trust property: *Everett v Prythergch* (1841) 12 Sim 363 at 367-368.

2 *Beaumont v Beaumont* (1811) cited in 3 Mer at 696; *Brodie v Barry* (1811) 3 Mer 695; *Browell v Reed* (1842) 1 Hare 434. As regards a public trust see PARA 342 text and note 4 post.

3 *Middleton v Dodswell* (1806) 13 Ves 266; *Richards v Perkins* (1838) 3 Y & C Ex 299; *Smith v Smith* (1853) 10 Hare, App II, lxxi; *Swale v Swale* (1856) 22 Beav 584. As to his appointment at the instance of one of the trustees see *Re Fowler*, *Fowler v Odell* (1881) 16 ChD 723.

4 *Havers v Havers* (1740) Barn Ch 22 at 24; *Middleton v Dodswell* (1806) 13 Ves 266; *Wilson v Wilson* (1838) 2 Keen 249; *Tait v Jenkins* (1842) 1 Y & C Ch Cas 492; *Cole v Muddle* (1852) 10 Hare 186 at 190 per Turner V-C.

5 *Dyot v Morgan* (1806) cited in 13 Ves at 268; *Barkley v Lord Reay* (1843) 2 Hare 306 at 308. Cf *Re Wells*, *Molony v Brooke* (1890) 45 ChD 569 at 575 (executor). It is not a sufficient ground for appointing a receiver that an insolvent debtor has been deliberately named as a trustee by the creator of the trust (*Stainton v Carron Co* (1854) 18 Beav 146 at 161 per Romilly MR; cf in the case of an executor para 333 ante), or that the trustees are in poor circumstances (*Hathornthwaite v Russel* (1740) 2 Atk 126; *Anon* (1806) 12 Ves 4; *Howard v Papera* (1815) 1 Madd 142), or that one of several co-trustees has disclaimed the trust (*Browell v Reed* (1842) 1 Hare 434), or has gone abroad or otherwise takes no part in administering the trust (*Browell v Reed* supra at 435 per Wigram V-C). The fact of a trustee for sale letting a purchaser into possession before receiving his purchase money is not sufficient ground for appointing a receiver: *Browell v Reed* supra.

6 *A-G v Schonfeld* [1980] 3 All ER 1, [1980] 1 WLR 1182.

7 *Anon* (1806) 12 Ves 4 at 5 per Grant MR; *Middleton v Dodswell* (1806) 13 Ves 266 at 269 per Lord Erskine LC; *Richards v Perkins* (1838) 3 Y & C Ex 299; *Evans v Coventry* (1854) 5 De GM & G 911, CA.

8 *Anon* (1806) 12 Ves 4 at 5 per Grant MR.

9 *Evans v Coventry* (1854) 5 De GM & G 911 at 918, CA, per Turner LJ.

10 *Gladdon v Stoneman* (1808) 1 Madd 143n; *Langley v Hawk* (1820) 5 Madd 46; *Shore v Shore* (1859) 4 Drew 501 at 502; *Re Hopkins*, *Dowd v Hawtin* (1881) 19 ChD 61, CA.

11 *Havers v Havers* (1740) Barn Ch 22; *Middleton v Dodswell* (1806) 13 Ves 266; *Scott v Becher* (1817) 4 Price 346; *Mansfield v Shaw* (1818) 3 Madd 100; *Stainton v Carron Co* (1854) 18 Beav 146 at 161.

12 *Taylor v Allen* (1741) 2 Atk 213; *Noad v Backhouse* (1843) 2 Y & C Ch Cas 529; *Smith v Smith* (1853) 10 Hare, App II, lxxi. A receiver was appointed where one of four trustees was dead, another was abroad, the third had not actively interfered in the trust, and the fourth consented to the appointment: *Tidd v Lister* (1820) 5 Madd 429; see also *Browell v Reed* (1842) 1 Hare 434 at 435.

13 *Anon* (1806) 12 Ves 4 at 5 per Grant MR; *Middleton v Dodswell* (1806) 13 Ves 266; *Everett v Prythergch* (1841) 12 Sim 363 at 367, 368; *Bainbrigge v Blair* (1841) 3 Beav 421; and see generally TRUSTS vol 48 (2007 Reissue) PARAS 1073, 1095.

14 *Clarke v Heathfield* [1985] ICR 203, CA, upholding the ex parte order granted by the court below.

15 *Clarke v Heathfield (No 2)* [1985] ICR 606. For the Irish sequel see *Larkins v National Union of Mineworkers* [1985] IR 671.

16 *Earl Talbot v Hope Scott* (1858) 4 K & J 139.

17 See note 16 supra.

18 *Swale v Swale* (1856) 22 Beav 584; *Hart v Denham* [1871] WN 2. Where trustees have to carry on a business which they are not themselves qualified to manage, they usually agree in appointing a manager; and, if they fail to do so, the appointment by the court of a receiver and manager of the business is a matter of course: *Hart v Denham* supra; and see PARA 483 post.

19 *Swale v Swale* (1856) 22 Beav 584.

20 *Re Fowler*, *Fowler v Odell* (1881) 16 ChD 723.

21 See the Law of Property Act 1925 ss 34, 36, Sch 1 Pt IV (as amended); para 338 post; and REAL PROPERTY vol 39(2) (Reissue) PARA 55 et seq.

22 *Bowen v Phillips* [1897] 1 Ch 174.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iii) Grounds of Appointment/335. Appointment against tenant for life.

335. Appointment against tenant for life.

Under the old law, a receiver was appointed against a tenant for life of renewable leaseholds who threatened to allow the lease to expire without providing for renewal¹, or who, by refusing to produce title deeds, prevented the raising of portions having priority to his life estate². The tenant for life is now under a statutory obligation to give effect to all equitable interests, by mortgage or other disposition, and, if he refuses or neglects or is unable to do so, a vesting order transferring or creating the requisite legal estate can be obtained³; and it is conceived that where the interests of the persons entitled to beneficial interests are imperilled by the omission or refusal of the tenant for life to perform his obligations, a receiver may still be appointed pending the making of a vesting or other appropriate order. Subject to certain exceptions, however, no settlement created on or after 1 January 1997 is a strict settlement and no such settlement is deemed to be made thereafter⁴.

1 *Bennett v Colley* (1833) 2 My & K 225.

2 *Brigstocke v Mansel* (1818) 3 Madd 47. As to non-production of title where the landlord neither collects the rents due nor performs deeds see *Shee v Harris* (1844) 1 Jo & Lat 91.

3 See the Settled Land Act 1925 s 16. For the procedure where a tenant for life has ceased to hold a beneficial interest see s 24; *Re Shawdon Estates Settlement* [1930] 2 Ch 1, CA; and SETTLEMENTS.

4 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 65.

UPDATE

313-372 Appointment by the Court

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336. Appointment in other cases.

In numerous other cases persons who show a prima facie interest in property of any sort may, in a properly constituted action, if it appears to the court to be just and convenient, have a receiver appointed for its protection. Thus, on the completion of a sale under order of the court, the vendor may have a receiver appointed to secure arrears of rent due to him¹, and trustees of a creditors' deed may obtain the appointment of a receiver against the debtor if he is shown to be wasting his assets in breach of covenants². However, the appointment is not made unless the property is in danger³ and proper parties are before the court⁴.

In accordance with these principles a receiver may also be appointed at the instance of the tenants of property where the landlord neither collects the rents due nor performs his repairing covenants and the property is deteriorating⁵.

1 *Quin v Holland* (1745) Ridg temp H 295.

2 *Riches v Owen* (1868) 3 Ch App 820; and see also *Waterlow v Sharp*, *Gardner v Sharp* [1867] WN 64.

3 *King v King* (1801) 6 Ves 172; *Jones v Frost* (1818) 3 Madd 1 (affd (1822) Jac 466); *George v Evans* (1840) 4 Y & C Ex 211; *Hackett v Snow* (1847) 10 I Eq R 220; *Whitworth v Whyddon* (1850) 2 Mac & G 52 at 55; *Bainbrigge v Baddeley* (1851) 3 Mac & G 413; *Hervey v Fitzpatrick* (1854) Kay 421, where there was danger of the assets of an intestate being taken out of the jurisdiction; *Barton v Rock* (1856) 22 Beav 376; *Micklethwait v Micklethwait* (1857) 1 De G & J 504 at 530; *Hitchen v Birks* (1870) LR 10 Eq 471; *Law v Garrett* (1878) 8 ChD 26, CA; *Thorn v Nine Reefs Ltd* (1892) 67 LT 93, CA; *Harris v Beauchamp Bros* [1894] 1 QB 801 at 810, CA; *Foxwell v Van Grutten* [1897] 1 Ch 64, CA; *Brydges v Brydges and Wood* [1909] P 187 at 188, CA.

4 See *Maxwell v Grunhut* (1914) 31 TLR 79, CA; and PARAS 323-326 ante.

5 *Hart v Emelkirk Ltd* [1983] 3 All ER 15, [1983] 1 WLR 1289; applied in *Daiches v Bluelake Investments Ltd* (1985) 51 P & CR 51. For the appointment of a receiver to ensure the proper performance of the landlord's repairing covenants see *Blawdziewicz v Diadon Establishment* [1988] 2 EGLR 52.

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313-372 Appointment by the Court

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337. Applicant's interest.

The applicant must satisfy the court that he has an interest in the property to be affected¹. A landlord, for instance, has not, as a rule, sufficient interest in the business carried on by his tenant to justify the appointment of a receiver over it; but it may be necessary for the preservation of premises as licensed premises to appoint a receiver of the licences with liberty to carry on the business so far as may be necessary to preserve them from forfeiture². Where a

receiver of mining property is claimed on the ground of partnership, the applicant must show that the alleged partnership holds something more than a mere licence to work the mines³.

1 *Jones v Jones* (1817) 3 Mer 161; *Greville v Fleming* (1845) 2 Jo & Lat 335. See also *Arthurs v Arthur* (1824) 1 Hog 95; *Richards v Goold* (1827) 1 Mol 22; *Lancashire v Lancashire* (1845) 9 Beav 120; *Fetherstone v Mitchell* (1846) 9 I Eq R 480; *Topping v Searson* (1862) 6 LT 449.

2 *Charrington & Co Ltd v Camp* [1902] 1 Ch 386; *Whitbread & Co v Grain* (1907) 23 TLR 462; *Leney & Sons Ltd v Callingham and Thompson* [1908] 1 KB 79, CA.

3 *Norway v Rowe* (1812) 19 Ves 144 at 158. See also PARA 485 post (manager); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 352, 369-370.

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313-372 Appointment by the Court

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338. Appointment as between co-owners.

A legal estate in land may no longer be held in undivided shares¹, and, whether the persons beneficially entitled are entitled as tenants in common or, except in the case of settled land, as joint tenants, the land is subject to an overriding trust of land². The appointment of a receiver in such cases is made in an action to which the trustees for sale are parties, and the principles applicable to appointments against trustees³ or in cases of partnership⁴ apply.

As between co-owners of a ship, a receiver may be appointed if the managing owner is in embarrassed circumstances⁵ or has shown a want of good faith towards his fellow owners⁶; and, as between co-owners of a newspaper, a receiver may be appointed if the owner in possession refuses to account⁷.

As between partners, the court will usually appoint a receiver after dissolution, although even then the appointment is not a matter of course⁸. The appointment will also be made if there has been such an abuse of good faith between the partners or other circumstances⁹ as to render dissolution inevitable¹⁰.

1 Law of Property Act 1925 s 1(6).

2 As to the imposition of a trust of land see REAL PROPERTY vol 39(2) (Reissue) PARAS 55, 66; as to joint tenancies see REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq; and as to tenancies in common see REAL PROPERTY vol 39(2) (Reissue) PARA 207 et seq.

3 As to appointment against trustees see PARA 334 ante.

4 As to partnerships see the text and notes 8-10 infra.

- 5 *The Amphill* (1880) 5 PD 224.
- 6 *Brenan v Preston* (1852) 2 De GM & G 813.
- 7 *Kelly v Hutton, Kelly v M'Murray* (1869) 20 LT 201.
- 8 *Pini v Roncoroni* [1892] 1 Ch 633; *Sobell v Boston* [1975] 2 All ER 282, [1975] 1 WLR 1587. For the form of action where an alien enemy is a partner see *Porter v Freudenberg* [1915] 1 KB 857, CA. Cf *Rombach v Rombach* [1914] WN 423.
- 9 Cf *Re Yenidje Tobacco Co Ltd* [1916] 2 Ch 426, CA.
- 10 *Chapman v Beach* (1820) 1 Jac & W 594; *Smith v Jeyes* (1841) 4 Beav 503; *Baxter v West* (1858) 28 LJ Ch 169; and see PARTNERSHIP vol 79 (2008) PARA 163.

UPDATE

313-372 Appointment by the Court

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339. Appointment in aid of creditors.

A receiver may be appointed in aid of creditors¹. Although it has been held that an order for maintenance in divorce proceedings constitutes the wife a judgment creditor, so that she may be entitled to the appointment of a receiver of her husband's interest under a settlement², it appears that, having regard to the peculiar jurisdiction of the Family Division to enforce its own orders, application should be made in that division³.

An incumbrancer is entitled to a receiver if the principal money has become payable⁴ or, in the case of an equitable charge, if his interest is in arrear⁵; and, even if no default has been made, he may have a receiver appointed if he satisfies the court that his security is in jeopardy⁶. This applies to the floating security constituted by a debenture as well as to specific charges⁷. In the case of mortgages of tolls of a public undertaking, the fact that interest is in arrear justifies the appointment of a receiver⁸.

A plaintiff who is seeking to establish a claim as a general creditor against a defendant is not, before trial, granted a receiver of specific property of the defendant, unless the evidence is very clear in his favour and the risk of eventual injury to the defendant very small; but, if the property is in no one's possession, a receiver may be appointed to preserve the property pending determination of the rights of the parties⁹.

1 As to appointment by way of equitable execution see CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq.

2 *Oliver v Lowther* (1880) 28 WR 381. See also CIVIL PROCEDURE vol 12 (2009) PARA 1499.

3 See *Ivimey v Ivimey* [1908] 2 KB 260, CA. Cf *Re Hedderwick, Morton v Brinsley* [1933] Ch 669; and the Family Proceedings Rules 1991, SI 1991/1247, r 7.1; and see the Supreme Court Practice 1997 para 42/1/9.

4 *Curling v Marquis of Townshend* (1816) 19 Ves 628 at 633; *Hopkins v Worcester and Birmingham Canal Properties* (1868) LR 6 Eq 437; *Walsh v Dublin Port and Docks Board* (1881) 7 LR Ir 533 at 544; *Re Tewkesbury Gas Co, Tysoe v Tewkesbury Gas Co* [1911] 2 Ch 279 (affd [1912] 1 Ch 1, CA); *Re Crompton & Co Ltd, Player v Crompton & Co Ltd* [1914] 1 Ch 954; and see MORTGAGE vol 77 (2010) PARA 101 et seq.

5 *Aberdeen v Chitty* (1839) 3 Y & C Ex 379 at 382; *Meaden v Sealey* (1849) 6 Hare 620; *Bissill v Bradford Tramways Co Ltd* [1891] WN 51.

6 *Wildy v Mid-Hants Rly Co* (1868) 18 LT 73; *McMahon v North Kent Ironworks Co* [1891] 2 Ch 148; *Duke of Grafton v Taylor, Earl Manvers v Taylor* (1891) 7 TLR 588; *Edwards v Standard Rolling Stock Syndicate* [1893] 1 Ch 574; *Re Victoria Steamboats Ltd, Smith v Wilkinson* [1897] 1 Ch 158. See further MORTGAGE vol 77 (2010) PARA 560.

7 *Re London Pressed Hinge Co Ltd, Campbell v London Pressed Hinge Co Ltd* [1905] 1 Ch 576; *Re Tilt Cove Copper Co, Trustees, Executors and Securities Insurance Corp Ltd v Tilt Cove Copper Co Ltd* [1913] 2 Ch 588. For the meaning of jeopardy see *Re New York Taxicab Co Ltd, Sequin v New York Taxicab Co Ltd* [1913] 1 Ch 1.

8 *Potts v Warwick and Birmingham Canal Navigation Co* (1853) Kay 142; *De Winton v Brecon Corp* (1859) 26 Beav 533; *Hopkins v Worcester and Birmingham Canal Proprietors* (1868) LR 6 Eq 437.

9 *Owen and Gutch v Homan* (1853) 4 HL Cas 997 at 1032-1033; and see also *Arthurs v Arthur* (1824) 1 Hog 95; *Higginson v German Athenaeum Ltd* (1916) 32 TLR 277 (club in state of suspended animation during war); and PARA 330 ante.

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340. Special statutory jurisdiction.

Courts with bankruptcy jurisdiction have a statutory jurisdiction to appoint the official receiver interim receiver of the debtor's property with power to take possession at once before any receiving order is made¹. Where any proceeding for the recovery of estate duty in respect of any property was instituted, the High Court had power to appoint a receiver of the property and its rents and profits²; but there is no corresponding special statutory jurisdiction to appoint a receiver for the purposes of inheritance tax³.

1 See the Insolvency Act 1986 s 286; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 223. The powers conferred on an interim receiver so appointed do not apply to property for the time being subject to a restraint order made under the Criminal Justice Act 1988 s 77 (as amended) (see s 84(5)) or under the Drug Trafficking Act 1994 (see s 32(4)). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

2 See the Finance Act 1894 s 8(13) (repealed in relation to deaths after 12 March 1975); *Re Bowerman, Porter v Bowerman* [1908] 2 Ch 340.

3 See generally INHERITANCE TAXATION.

UPDATE

313-372 Appointment by the Court

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340 Special statutory jurisdiction

NOTE 1--1988 Act ss 77, 84(5) and 1994 Act 32(4) replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iv) Reasons for refusing Appointment/341. Party in possession.

(iv) Reasons for refusing Appointment

341. Party in possession.

A strong case must be made out to dispossess a party who is interested and who has the legal title¹. As against a prior legal mortgagee in possession, for instance, a receiver will not be appointed unless the mortgagee's debt has been wholly satisfied². The legal title, however, does not protect a party in possession from the appointment of a receiver if it has been acquired subject to existing equitable interests which he has failed to respect³ or with notice of a pending suit⁴.

1 *Andrews v Powys* (1723) 2 Bro Parl Cas 504; *Vann v Barnett* (1787) 2 Bro CC 157; *Hugonin v Baseley* (1806) 13 Ves 105; *Middleton v Dodswell* (1806) 13 Ves 266; *Lloyd v Passingham* (1809) 16 Ves 59; *Rutherford v Douglas* (1822) 1 Sim & St 111n; *Smith v Smith* (1836) 2 Y & C Ex 353; *Bainbrigge v Baddeley* (1851) 3 Mac & G 413 at 420; *Campbell v Campbell* (1864) 4 Macq 711, HL; *Baird v Walker* (1890) 35 Sol Jo 56; and see also *Whitworth v Gaugain* (1841) Cr & Ph 325, where a judgment creditor was in possession under an *elegit* (a form of execution now abolished) and the court refused to appoint a receiver against him at the instance of an equitable mortgagee who relied, not on any priority of title, but on charges of fraud and collusion, which he failed to substantiate. For refusal of the remedy on this and other grounds see also Picarda *Law Relating to Receivers, Managers and Administrators* (2nd Edn, 1990) pp 332-338.

2 *Quarrell v Beckford* (1807) 13 Ves 377; *Codrington v Parker* (1810) 16 Ves 469; *Berney v Sewell* (1820) 1 Jac & W 647; *Faulkner v Daniel* (1840) 3 Hare 204n; *Re Southern Rly Co, ex p Robson* (1885) 17 LR Ir 121 at 140, Ir CA; and see MORTGAGE vol 77 (2010) PARA 101 et seq. In *Archdeacon v Bowes* (1796) 3 Anst 752 the possession was referable to a tenancy, and not to the right of the mortgagee.

3 *Pritchard v Fleetwood* (1815) 1 Mer 54.

4 *Landon v Morris* (1832) 5 Sim 247 at 264.

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342. Effect of absence of parties.

When the defendant in an administration action becomes bankrupt, the absence of the trustee in bankruptcy is insufficient reason for refusing to appoint a receiver, although it may prevent the effectual prosecution of the action¹. When the property over which a receiver is claimed is in mortgage, it is no objection that the mortgagees are not before the court, for their rights will not be prejudiced by the order², and, generally, where all necessary parties are not before the court, it seems that a receiver may be appointed if the appointment cannot prejudice their interests³. However, in the case of a public trust, a receiver is not appointed in the absence of the Attorney General⁴.

1 *Re Johnson, Steele v Cobham* (1866) 1 Ch App 325.

2 *Dalmer v Dashwood* (1793) 2 Cox Eq Cas 378 at 382; *Norway v Rowe* (1812) 19 Ves 144; *Smith v Egan* (1837) 5 Sa & Sc 238; *Wells v Kilpin* (1874) LR 18 Eq 298; *Bryant v Bull, Bull v Bryant* (1878) 10 ChD 153. In foreclosure proceedings the mortgagor and incumbrancers ranking after the plaintiff are necessary parties: see MORTGAGE vol 77 (2010) PARA 566 et seq.

3 *Holmes v Bell* (1840) 2 Beav 298; *Hamp v Robinson* (1865) 3 De GJ & Sm 97 at 109.

4 *Skinners' Co v Irish Society* (1836) 1 My & Cr 162; and see also *Gray v Chaplin* (1826) 2 Russ 126 at 147.

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343. Objection of parties.

It is no ground for refusing to make the appointment that a majority of those interested in the property do not desire it¹, or that a prior incumbrancer objects²; but, in appointing a receiver, the court will take care to protect the rights of persons interested in the property other than the applicant³. Thus, the appointment of a receiver at the instance of beneficiaries or unsecured creditors will be made without prejudice to the right of mortgagees to take possession⁴; an appointment at the instance of puisne incumbrancers will be made without prejudice to the rights of prior incumbrancers⁵, an inquiry as to priorities being directed if necessary⁶; and, after the death of a judgment debtor, the court will not, by appointing a receiver, assist one judgment creditor to obtain a preference over others who are not parties to the proceedings⁷. Generally, the court does not appoint a receiver if the appointment may involve grave risk of injury to the interests of other persons interested⁸.

The court will be reluctant to risk damage to the reputation of a professional partnership by appointing a receiver, particularly where the integrity of the partners is not in question⁹.

1 *Archdeacon v Bowes* (1796) 3 Anst 752; *Gray v Chaplin* (1826) 2 Russ 126 at 131; *Wood v Hitchings* (1840) 2 Beav 289; *Palmer v Wright* (1846) 10 Beav 234; *Fripp v Chard Rly Co, Fripp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1853) 11 Hare 241 at 259.

2 *Silver v Bishop of Norwich* (1816) 3 Swan 112n at 114n.

3 *Contract Corp'n v Tottenham and Hampstead Junction Rly Co* [1868] WN 242.

4 *Bryan v Cormick* (1788) 1 Cox Eq Cas 422; *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 137; *Smith v Egan* (1837) Sau & Sc 238 at 244; *Bainbrigge v Bainbrigge* (1850) 20 LJ Ch 139 at 142; *Wells v Kilpin* (1874) LR 18 Eq 298; *Salt v Cooper* (1880) 16 ChD 544 at 545, CA; *Searle v Choat* (1884) 25 ChD 723, CA; *Walmsley v Mundy* (1884) 13 QBD 807, CA; *Underhay v Read* (1887) 20 QBD 209 at 210, CA; *Re Whiteley, Whiteley v Learoyd* (1887) 56 LT 846 at 848; *Croshaw v Lyndhurst Ship Co* [1897] 2 Ch 154.

5 *Dalmer v Dashwood* (1793) 2 Cox Eq Cas 378; *Berney v Sewell* (1820) 1 Jac & W 647; *Cox v Champneys* (1822) Jac 576; *Pease v Fletcher* (1875) 1 ChD 273; *Cummins v Perkins* [1899] 1 Ch 16 at 18, CA; *Re Ind Coope & Co Ltd, Fisher v Ind Coope & Co Ltd, Knox v Ind Coope & Co Ltd, Arnold v Ind Coope & Co Ltd* [1911] 2 Ch 223 at 226; *Re Metropolitan Amalgamated Estates Ltd, Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497. Unless the order contains an express reservation of the rights of a prior mortgagee, an application to the court is necessary before he may take possession: see *Re Henry Pound, Son and Hutchins* (1889) 42 ChD 402 at 422, CA.

6 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 137-138.

7 *Re Cave, Mainland v Cave* [1892] WN 142, CA.

8 *Skinners' Co v Irish Society* (1836) 1 My & Cr 162; *Owen and Gutch v Homan* (1853) 4 HL Cas 997 at 1032.

9 *Floydd v Cheney* [1970] Ch 602, [1970] 1 All ER 446 (architects); *Sobell v Boston* [1975] 2 All ER 282, [1975] 1 WLR 1587 (solicitors).

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344. Laches and acquiescence.

Laches and acquiescence on the part of the applicant may be a ground for refusing to appoint a receiver¹. Thus, one of several co-adventurers in a mining concern who has never interfered or asserted his title while it was being conducted at a loss will not be allowed after many years to come forward in a time of prosperity and claim the appointment of a receiver on the ground of exclusion and mismanagement².

1 *Gray v Chaplin* (1826) 2 Russ 126 at 142; *Skinners' Co v Irish Society* (1836) 1 My & Cr 162.

2 *Norway v Rowe* (1812) 19 Ves 144; and see also *Brenan v Preston* (1852) 2 De GM & G 813; *Fripp v Chard Rly Co*, *Fripp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1853) 11 Hare 241; *Thomson v Anderson* (1870) LR 9 Eq 523 at 533. As to acquiescence and laches generally see EQUITY vol 16(2) (Reissue) PARA 909 et seq.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(iv) Reasons for refusing Appointment/345. Improper purpose.

345. Improper purpose.

Even where the circumstances may justify the appointment of a receiver, the appointment is not made if it is sought for an improper purpose. Thus, a partner is not allowed, by getting himself appointed receiver, to obtain powers in excess of those authorised by the articles of partnership¹; nor may a debtor obtain a receiver of his own property with a view to preventing his creditors from taking possession²; and normally the court does not grant a receiver on an interlocutory application if it can do so only by prejudging the action itself³.

Similarly, no application may be made by or on behalf of the defendant for the appointment of a receiver in order to preserve assets intended for the satisfaction of a confiscation order⁴.

1 *Niemann v Niemann* (1889) 43 ChD 198, CA.

2 *Piers v Latouche* (1825) 1 Hog 310. Formerly, a receiver was not granted for the purpose of defeating an executor's legal right of retainer (*Re Wells*, *Molony v Brooke* (1890) 45 ChD 569; *Baird v Walker* (1890) 35 Sol Jo 56), or his right of preferring one creditor to another of the same degree (*Philips v Jones* (1884) 28 Sol Jo 360,

CA, disapproving dictum of Jessel MR in *Re Radcliffe, European Assurance Society v Radcliffe* (1878) 7 ChD 733; *Re Harris, Harris v Harris* (1887) 56 LJ Ch 754; *Re Stevens, Cooke v Stevens* [1898] 1 Ch 162 at 173, CA). The rights of preference and retainer are abolished in respect of deaths occurring after 1 January 1972: see the Administration of Estates Act 1971 ss 10(1), 12(6), 14(2); and EXECUTORS AND ADMINISTRATORS.

3 *Skinnners' Co v Irish Society* (1836) 1 My & Cr 162; *Baxter v West* (1858) 28 LJ Ch 169; *Tucker v Prior* (1887) 31 Sol Jo 784. Cf *Floydd v Cheney* [1970] Ch 602, [1970] 1 All ER 446, where Megarry J held that the fact that the existence of a partnership is in issue is only one of the factors to be taken into account in appointing a receiver.

4 See *Re M (Restraint Order)* [1992] QB 377, [1992] 1 All ER 537. As to confiscation orders see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

UPDATE

313-372 Appointment by the Court

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346. Where effect would be nugatory.

A receiver will not be appointed if the appointment would be nugatory¹; but the fact that there is no person in whose name the receiver could sue to recover the property is not a sufficient ground for refusing a receiver², for the appointment at least operates as an injunction against receipt of the property by any party to the action³.

1 As to when such an appointment would be nugatory see generally paras 356-357 post.

2 *Wood v Hitchings* (1840) 2 Beav 289; *Acheson v Hodges* (1841) 3 L Eq R 516; *Kirk v Houston* (1843) 5 L Eq R 498.

3 As to a receiver's right to possession see PARA 373 post.

UPDATE

313-372 Appointment by the Court

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347. Debt due from the Crown.

Subject to any order made by the Lord Chancellor and for the time being in force¹, where any money is payable by the Crown to some person who, under any order of any court, is liable to pay any money to any other person, and that other person would, if the money so payable by the Crown were money payable by a subject, be entitled under rules of court to obtain an order for the appointment of a receiver to receive the money on his behalf, the court² may³ make an order restraining the first-mentioned person from receiving that money and directing payment of it to the receiver⁴. No such order may, however, be made in respect of any wages or salary payable to any officer of the Crown as such, or any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution⁵; and no order for the appointment of a receiver may be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown⁶.

1 Ie under the Supreme Court Act 1981 s 139(2) (which empowers the Lord Chancellor to direct that the provisions set out in the text and notes 2-5 infra are not to apply in relation to any money payable by the Crown to any person on account of any deposit in the National Savings Bank or a deposit in that bank of any description specified in the order). At the date at which this volume states the law, no such order had been made. See further *Brooks Associates Inc v Basu (Department for National Savings, garnishee)* [1983] QB 220, [1983] 1 All ER 508.

2 Ie the High Court or a county court: see the Crown Proceedings Act 1947 s 27(1), (2).

3 Ie subject to the provisions of the Crown Proceedings Act 1947 and in accordance with rules of court or county court rules: see s 27(1), (2).

4 See *ibid* s 27(1), (3) (s 27(3) added by the Supreme Court Act 1981 s 139(1)). As to applications under the Crown Proceedings Act 1947 s 27 (as amended) see RSC Ord 77 r 16(1A)-(3); CCR Ord 42 r 14(2)-(5).

5 Crown Proceedings Act 1947 s 27(1) proviso (a), (b).

6 See RSC Ord 77 r 16(1); CCR Ord 14 r 14(1); and CIVIL PROCEDURE vol 12 (2009) PARA 1239; COURTS.

UPDATE

313-372 Appointment by the Court

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RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

347 Debt due from the Crown

NOTES 1, 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

NOTE 3--Reference to county court rules omitted: 1947 Act s 27(2) (amended by SI 2005/2712).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(v) Choice of Person to be Appointed/348. Nomination on motion.

(v) Choice of Person to be Appointed

348. Nomination on motion.

On a motion for the appointment of a receiver, a named person is often appointed on proper evidence of fitness provided that he is an independent person and no valid objection is raised by any party to the action¹. If the applicant is in substance the only person interested, the applicant himself may be appointed to act at once as interim receiver². Where a named person is appointed with liberty to act forthwith, the applicant undertakes to be responsible for his acts and defaults, and, if necessary, to be answerable in damages³; also to abide by such order as the court may make⁴.

¹ *Re Llewellyn, Lane v Lane* (1883) 25 ChD 66 at 68; *Tillett v Nixon* (1883) 25 ChD 238 at 240; *Re Golding* (1888) 21 LR Ir 194; *Re Prytherch, Prytherch v Williams* (1889) 42 ChD 590 at 601; *Makins v Percy Ibotson & Sons* [1891] 1 Ch 133; and see also *Budgett v Improved Patent Forced Draught Furnace Syndicate Ltd* [1901] WN 23.

² *Bagot v Bagot* (1838) 2 Jur 1063; *Hoffman v Duncan* (1853) 18 Jur 69; *Boyle v Bettws Llantwit Colliery Co* (1876) 2 ChD 726.

³ *Rawson v Rawson* (1864) 11 LT 595.

⁴ *Taylor v Eckersley* (1876) 2 ChD 302, CA; *Hyde v Warden* (1876) 1 Ex D 309, CA. See also *Brenan v Preston* (1852) 2 De GM & G 813; *Blackett v Blackett* (1871) 24 LT 276; *Truman & Co v Redgrave* (1881) 18 ChD 547.

UPDATE

313-372 Appointment by the Court

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(v) Choice of Person to be Appointed/349. Reference to a master.

349. Reference to a master.

If no named person is put forward, or where any valid objection is taken to the applicant's nominee, the appointment is referred to chambers, where it is the duty of the master to select, from among the various persons nominated by the parties interested, the person whom he considers in all the circumstances of the case best fitted to fill the post¹. In practice, the person

nominated by the party having the carriage of the order is usually appointed, unless he is objected to and some other person is shown to be better qualified², but special directions are sometimes given to the master that preference should be shown or should not be shown to the nominee of a particular party³.

The court does not interfere with the master's discretion in making the appointment unless the person he has selected is shown to be unfit⁴ or some question of principle is involved⁵, and any objection to the master's appointment should be made promptly⁶. The mere allegation that someone else is better fitted for the post does not justify interference⁷. The Court of Appeal is guided by similar considerations when asked to review an appointment by the judge⁸.

1 *Lespinasse v Bell* (1821) 2 Jac & W 436; *Wood v Hitchings* (1840) 4 Jur 858; *Griffin v Bishop's Castle Rly Co* (1867) 15 WR 1058. Whether a conditional appointment can be made, eg to take effect only in the event of the death of an existing receiver, is uncertain: see *Forbes v Hammond* (1819) 1 Jac & W 88.

2 *Wilson v Poe* (1825) 1 Hog 322; *Gibbs v David* (1875) LR 20 Eq 373.

3 *Dillon v Lady Mount Cashell* (1727) 4 Bro Parl Cas 306 at 312; *Cockburn v Raphael* (1825) 2 Sim & St 453; *Baylies v Baylies* (1844) 1 Coll 537 at 548; *Norton v Gover* [1877] WN 206; and see *The Amphill* (1880) 5 PD 224.

4 *Creuzé v Bishop of London* (1787) 2 Bro CC 253; *Thomas v Dawkin* (1792) 1 Ves 452; *Tharpe v Tharpe* (1806) 12 Ves 317; *A-G v Day* (1817) 2 Madd 246 at 253; *Re Lord Bangor* (1818) 2 Mol 518.

5 *Perry v Oriental Hotels Co* (1870) 5 Ch App 420: see PARA 351 post.

6 *Chaytor v Maclean* (1848) 11 LTOS 2.

7 *Bowersbank v Colasseau* (1796) 3 Ves 164; *Anon* (1797) 3 Ves 515; *A-G v Day* (1817) 2 Madd 246.

8 *Lupton v Stephenson* (1848) 11 I Eq R 484; *Cookes v Cookes* (1865) 2 De GJ & Sm 526; *Nothard v Proctor* (1875) 1 ChD 4 at 8, CA.

UPDATE

313-372 Appointment by the Court

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(v) Choice of Person to be Appointed/350. Eligibility for appointment.

350. Eligibility for appointment.

A minor cannot be appointed a receiver¹, and it seems that a beneficed clergyman in England is ineligible because he is subject to statutory restrictions as to trading². A peer of the realm is unsuitable, because the ordinary remedies against a receiver, such as that of committal, are not available against him³, and the same is true of a member of the House of Commons⁴ or, it seems, a person resident outside the jurisdiction⁵. It is an objection that the person proposed

has given security to the Crown which might result in all his property being swept away by prerogative process⁶. A person may be disqualified by rules of court⁷.

In the ordinary case of a receivership of the rents and profits of land, it is not a fatal objection that the person nominated has no experience of estate management⁸ provided that he is in other respects well qualified. It is an objection, however, that the person proposed will be unable to give personal attention to the duties of the office because his daily affairs leave him no time to do so or he cannot do so because of the distance at which he lives from the estate⁹ although these objections may be outweighed by his position in the family and special confidence reposed in him by the testator¹⁰.

Two or more persons may be appointed joint receivers where conflicting interests or other circumstances render it desirable¹¹.

If an undischarged bankrupt acts as receiver or manager of the property of a company on behalf of debenture holders, he is liable to imprisonment or a fine, or both, but this does not apply to a receiver or manager acting under an appointment made by the court¹².

A person appointed as administrative receiver of a company must be qualified to act as an insolvency practitioner in relation to the company¹³.

1 As to the incapacity of a minor to be appointed a receiver see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 5.

2 As to such restrictions on trading see ECCLESIASTICAL LAW. It appears that a barrister in practice or a student of the Inns of Court is ineligible because of restrictions as to trading: see LEGAL PROFESSIONS.

3 *A-G v Gee* (1813) 2 Ves & B 208; and see note 4 infra.

4 *Wellesley v Duke of Beaufort, Long Wellesley's Case* (1831) 2 Russ & M 639; *Re Ludlow Charities, Lechmere Charlton's Case* (1837) 2 My & Cr 316; *Re Armstrong, ex parte Lindsay* [1892] 1 QB 327. A member of Parliament or peer, if appointed receiver, can be committed for contempt of court if the proceedings are of a punitive character: see *Re Gent, Gent-Davis v Harris* (1888) 40 ChD 190; *Earl of Aylesford v Earl Poulett* [1892] 2 Ch 60; Erskine May's Parliamentary Practice (22nd Edn, 1997) p 102 et seq; and see further PARLIAMENT vol 78 (2010) PARA 1084; PEERAGES AND DIGNITIES vol 79 (2008) PARA 828.

5 As to the appointment of a receiver of foreign immovables see PARA 358 post.

6 *A-G v Day* (1817) 2 Madd 246 at 254 (receiver-general of a county).

7 *Re Stokes* (1844) 7 I Eq R 450; *Meara v Egan* (1846) 9 I Eq R 259 (solicitor's clerk disqualified by rules of court then in force in Ireland).

8 *Garland v Garland* (1793) 2 Ves 137; *Wilkins v Williams* (1798) 3 Ves 588; *Bagot v Bagot* (1841) 10 LJ Ch 116 at 120. It was held in *Chaytor v Maclean* (1848) 11 LTOS 2 that illiteracy was not a fatal objection, but this case may no longer be good authority.

9 *Re Errington, ex p Fermor* (1821) Jac 404 (committee). With the means of communication that now exist, the objection of distance is of less weight than formerly: see eg *Re Carshalton Park Estate Ltd, Graham v Carshalton Park Estate Ltd, Turnell v Carshalton Park Estate Ltd* [1908] 2 Ch 62 at 68.

10 *Wynne v Lord Newborough* (1808) 15 Ves 283.

11 *Scott v Platel* (1847) 2 Ph 229; *Ramsden v Fairthorp* (1863) 1 New Rep 389; *Gardner v London, Chatham and Dover Rly Co, Drawbridge v London, Chatham and Dover Rly Co, Gardner v London, Chatham and Dover Rly Co (No 2), Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 223; *Blackett v Blackett* (1871) 24 LT 276; *Trade Auxiliary Co v Vickers* (1873) LR 16 Eq 303; *Hills v Reeves* (1882) 31 WR 209, CA; *Re Parker and Parker, ex p Official Receiver* (1884) 1 Morr 39; *Strapp v Bull Sons & Co, Shaw v London School Board* [1895] 2 Ch 1 at 2, CA; *Milward v Avill and Smart Ltd* [1897] WN 162; *Duder v Amsterdamsch Trustees Kantoer* [1902] 2 Ch 132.

12 See the Insolvency Act 1986 s 31; and COMPANIES vol 15 (2009) PARA 1346.

13 See *ibid* s 230(2); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 9. As to administrative receivers see PARA 302 ante.

UPDATE**313-372 Appointment by the Court**

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350 Eligibility for appointment

TEXT AND NOTE 12--The provisions prohibiting an undischarged bankrupt from acting as receiver or manager of the property of a company on behalf of debenture holders now also apply in the same way to a person who is the subject of a moratorium period under a debt relief order or a debt relief restrictions order, or a bankruptcy restrictions order: see the 1986 Act s 31 (s 31 substituted by the Enterprise Act 2002 Sch 21 para 1, amended by the Tribunals, Courts and Enforcement Act 2007 Sch 20 para 2). As to debt relief orders, debt relief restrictions orders and bankruptcy restrictions orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARAS 123B, 464A.1.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(v) Choice of Person to be Appointed/351. Interested persons.

351. Interested persons.

As a matter of principle, a person ought not to be appointed receiver who has shown a partiality for one of the parties¹, or who proposes to act under the direction and control of one of the parties², or whose interests may conflict with his duties³, although it may sometimes be desirable to appoint a person specially qualified even though interested⁴ or, on grounds of convenience, to retain the services of someone already employed by a party interested⁵. A party to the action should not be appointed unless by consent⁶, or unless there are special circumstances justifying his appointment in preference to others⁷; indeed, a party to the action may not propose himself without the leave of the court⁸, and such leave when given does no more than remove the disability under which he would otherwise have rested⁹.

1 *Blakeway v Blakeway* (1833) 2 LJ Ch 75; *Wright v Vernon* (1855) 3 Drew 112 at 120; *Young v Buckett* (1882) 51 LJ Ch 504; *Giles v Nuttall, Re House Improvement Association Ltd* (1885) 78 LT Jo 130, 352, CA.

2 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 118; *Lupton v Stephenson* (1848) 11 I Eq R 484.

3 *Fripp v Chard Rly Co, Fripp v Bridgewater and Taunton Canal etc Co* (1853) 11 Hare 241.

4 As to persons specially qualified although interested see PARA 353 post.

5 *Lespinasse v Bell* (1821) 2 Jac & W 436.

6 *Dawson v Yates* (1838) 1 Beav 301 at 305; *Re Lloyd, Allen v Lloyd* (1879) 12 ChD 447, CA; *Re Prytherch, Prytherch v Williams* (1889) 42 ChD 590 at 601; *Re Shorter, Shorter v Shorter* [1911] P 184. As to appointing a judgment creditor see PARA 354 post.

7 *Turner v Lord Donegal* (1845) 8 I Eq R 235; *Hoffman v Duncan* (1853) 18 Jur 69; *Powys v Blagrave* (1853) 18 Jur 462; *Sargant v Read* (1876) 1 ChD 600; *Moore v O'Loughlin* (1879) 3 LR Ir 405 at 407; and see PARA 353 post.

8 *Dawson v Yates* (1838) 1 Beav 301; *Meaden v Sealey* (1849) 6 Hare 620; *Sargant v Read* (1876) 1 ChD 600. In partnership actions, each party is generally allowed to propose himself as receiver and manager: *Pini v Roncoroni* [1892] 1 Ch 633 at 638; and see PARTNERSHIP vol 79 (2008) PARA 164.

9 *Earl of Fingal v Blake* (1829) 2 Mol 50; *Banks v Banks* (1850) 14 Jur 659; *Blakeney v Dufaur* (1851) 15 Beav 40 at 43.

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352. Persons who would otherwise control receiver.

A person whose duty it would otherwise be to check the accounts of the receiver and control his actions should not be appointed, unless there are very special circumstances rendering his appointment desirable¹. Thus, the next friend of a plaintiff who is a minor will not be appointed, even though no objection is raised by the other parties to the action²; nor will a son of the next friend be appointed³; and a master of the Supreme Court is not fitted for the post, in as much as his accounts would come under the review of one of his colleagues⁴. For the same reason, it is not desirable that the master should himself nominate the receiver, although it may be that in a matter of public concern he would be justified in doing so if the parties interested failed to nominate within a reasonable time⁵.

A trustee will not be appointed, at any rate with remuneration⁶, unless by reason of special knowledge of the property⁷ or special confidence reposed in him by the testator⁸ he is better fitted for the post than anyone else; but a trustee is generally allowed to propose himself if he offers to act without salary⁹, and the appointment of a trustee who has no active duties to perform, such as a trustee to preserve contingent remainders, is unobjectionable¹⁰.

For similar reasons, the appointment of the solicitor having the conduct of the cause¹¹, or who is actually and substantially the solicitor for the parties interested in the estate (the ostensible solicitor acting under his control)¹², or the appointment of a member of the firm of solicitors acting for the plaintiff¹³, is improper; but a solicitor is not as such ineligible for the position of receiver, although he is not allowed to charge profit costs¹⁴.

1 *Ex p Pincke* (1817) 2 Mer 452. As to appointing a judgment creditor see PARA 354 post.

2 *Stone v Wishart* (1817) 2 Madd 64.

3 *Taylor v Oldham* (1822) Jac 527.

- 4 *Ex p Fletcher* (1801) 6 Ves 427; *Ex p Pincke* (1817) 2 Mer 452.
- 5 *A-G v Day* (1817) 2 Madd 246.
- 6 See *Anon* (1797) 3 Ves 515; -- *v Jolland* (1802) 8 Ves 72; and PARA 436 post.
- 7 *Hibbert v Jenkins* (1805), cited in *Sykes v Hastings* (1805) 11 Ves 363.
- 8 *Morison v Morison* (1838) 4 My & Cr 215 (consignee of West Indian estate); *Gardner v Blane* (1842) 1 Har 381; *Newport v Bury* (1857) 23 Beav 30.
- 9 *Brodie v Barry* (1811) 3 Mer 695; *Tait v Jenkins* (1842) 1 Y & C Ch Cas 492; *Banks v Banks* (1850) 14 Jur 659.
- 10 *Sutton v Jones, Jones v Sutton* (1809) 15 Ves 584. See also *Nicholson v Tutin (No 2)* (1857) 3 K & J 159; *Earl of Talbot v Hope Scott* (1858) 4 K & J 139 at 141; *Re Bignell, Bignell v Chapman* [1892] 1 Ch 59, CA. A solicitor-trustee cannot properly act as solicitor to the receiver: *Re Corsellis, Lawton v Elwes* (1887) 34 ChD 675, CA. See also PARA 436 post.
- 11 *Garland v Garland* (1793) 2 Ves 137; *Ex p Pincke* (1817) 2 Mer 452.
- 12 *Sutton v Jones, Jones v Sutton* (1809) 15 Ves 584.
- 13 *Re Lloyd, Allen v Lloyd* (1879) 12 ChD 447, CA.
- 14 *Wilson v Poe* (1825) 1 Hog 322; *Della Cainea v Hayward* (1825) M'Cle & Yo 272; *Bagot v Bagot* (1841) 10 LJ Ch 116 at 120; *Lupton v Stephenson* (1848) 11 I Eq R 484.

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353. Persons specially qualified although interested.

In some cases, and particularly where powers of management are conferred, it may be desirable that a person with special knowledge or aptitude should be appointed¹, notwithstanding that he is an interested party². Thus in partnership actions a solvent partner is generally appointed³, and an executor or trustee is often appointed receiver and manager of a testator's business⁴, and, in the case of public undertakings, the chairman, manager or some other official of the company is usually chosen⁵. When a company is in liquidation, the liquidator is often appointed on grounds of economy and convenience⁶, and any receiver already in possession under a court order is discharged⁷; but, if the liquidator of a mining company in voluntary liquidation has not the means of keeping the mine open, an incumbrancer whose security is in consequence imperilled may have a receiver appointed in spite of opposition by the company⁸, and a liquidator will not be appointed receiver if he has assumed an attitude of hostility to the secured creditors⁹.

- 1 *Lupton v Stephenson* (1848) 11 I Eq R 484; *Gibbs v David* (1875) LR 20 Eq 373.
- 2 *Re Golding* (1888) 21 LR Ir 194; *Makins v Percy Ibotson & Sons* [1891] 1 Ch 133.
- 3 As to the appointment of a partner as receiver see PARTNERSHIP vol 79 (2008) PARA 164.
- 4 *Wells v Wales* (1855) 4 De GM & G 816.
- 5 *Potts v Warwick and Birmingham Canal Navigation Co* (1853) Kay 142; *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332; *Gardner v London, Chatham and Dover Rly Co*, *Drawbridge v London, Chatham and Dover Rly Co*, *Gardner v London, Chatham and Dover Rly Co (No 2)*, *Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 219.
- 6 *Perry v Oriental Hotels Co* (1870) 5 Ch App 420; *Tottenham v Swansea Zinc Ore Co Ltd* (1884) 53 LJ Ch 776; *Willmott v London Celluloid Co* (1885) 52 LT 642, CA; *Re Henry Pound Son and Hutchins* (1889) 42 ChD 402 at 419, 423, CA; *Re Joshua Stubbs Ltd*, *Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475 at 482, CA; *British Linen Co v South American and Mexican Co* [1894] 1 Ch 108, CA.
- 7 As to such discharge of a receiver see PARA 466 post. However, it is otherwise in the case of receivers appointed out of court: see *Re Henry Pound, Son and Hutchins* (1889) 42 ChD 402, CA; *Re Joshua Stubbs Ltd*, *Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA.
- 8 *Boyle v Bettws Llantwit Colliery Co* (1876) 2 ChD 726.
- 9 *Giles v Nuttall, Re House Improvement Association Ltd* (1885) 78 LT Jo 130, 352, CA. See also COMPANIES vol 15 (2009) PARAS 1349, 1365.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(v) Choice of Person to be Appointed/354. Right of creditor to nominate receiver.

354. Right of creditor to nominate receiver.

A judgment creditor or an incumbrancer is in general entitled to have his own nominee appointed receiver on satisfying the court of his fitness for the post by affidavit¹; but if the value of the equity of redemption is as great as that of the mortgage debt, and the master chooses to appoint the nominee of the mortgagor, his discretion will not be interfered with on the mere ground that the mortgagee's nominee is better qualified². In the case of debentures, the nominee of trustees representing the whole body of debenture holders is preferred to the nominee of an individual debenture holder, even though his action is prior in point of time³; and, as between several incumbrancers, the nominee of a prior incumbrancer is preferred⁴; but when one order for the appointment of a receiver is made on several applications of persons whose rights are in other respects equal, the carriage of the order with its resulting advantages is generally given to the person whose notice of motion was first served, even though his writ is not the earliest⁵. A judgment creditor or mortgagee will not himself be appointed receiver unless he consents to act without salary⁶.

- 1 *Bowersbank v Colasseau* (1796) 3 Ves 164; *Wilkins v Williams* (1798) 3 Ves 588; *Anderson v Kemshead* (1852) 16 Beav 329 at 344-345.
- 2 *Thomas v Dawkin* (1792) 3 Bro CC 508.
- 3 *Re Septimus Parsonage & Co Ltd, Arts v Septimus Parsonage & Co Ltd, Law Guarantee and Trust Society v Septimus Parsonage & Co Ltd* (1901) 17 TLR 420.
- 4 *Bord v Tollemache* (1862) 1 New Rep 177.
- 5 *Hart v Tulk* (1849) 6 Hare 611; *Sargant v Read* (1876) 1 ChD 600.
- 6 *Sayers v Whitfield* (1829) 1 Knapp 133 at 142, PC; *Cummins v Perkins* [1899] 1 Ch 16 at 18, CA. See also *Cox v Champneys* (1822) Jac 576 (consignee of West Indian estate); *Davis v Barrett* (1844) 13 LJ Ch 304; *Beamish v Stephenson* (1886) 18 LR Ir 319.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vi) Property in respect of which Appointment may be Made/355. Realty and personalty generally.

(vi) Property in respect of which Appointment may be Made

355. Realty and personalty generally.

A receiver may be appointed¹ of the rents and profits of land, whether in possession or reversion², and of all kinds of personalty, including such diverse forms of property as a ship³, a cargo of guano⁴, furniture and chattels⁵, a reversionary interest⁶ (whether vested or contingent⁷), a motor car⁸, the rates and tolls of a public undertaking⁹, the machinery of a ship temporarily at an engineer's for repairs¹⁰, a newspaper¹¹, cabs and horses used in the business of a cab proprietor¹², the box office receipts of a theatre¹³, the emoluments of a college fellowship¹⁴, dividends on stocks and shares¹⁵, an interest under a will¹⁶, or debts due to a firm or individual¹⁷. A receiver is often appointed in general terms over all the property and assets comprised in a charge¹⁸.

Debenture holders who have obtained such an order may, on obtaining judgment for the amount of their debt, have the receivership extended to any property of the company not included in the order, so as to prevent other judgment creditors from seizing assets not covered by the debentures¹⁹.

1 As to property in respect of which a receiver may be appointed by way of equitable execution see CIVIL PROCEDURE vol 12 (2009) PARA 1498 et seq. This remedy is now rarely used in practice.

- 2 It appears that where the interest is reversionary, the receiver should be appointed to receive the rents and profits receivable in respect of the reversionary interest, not of the land: see *Re Harrison and Bottomley* [1899] 1 Ch 465 at 467, CA, per North J. A receiver may be appointed of a rentcharge, or of a fee farm rent: *Manly v Hawkins* (1838) 1 Dr & Wal 363; *Stevelly v Murphy* (1840) 2 I Eq R 448.
- 3 *Brenan v Preston* (1852) 2 De GM & G 813; *Liverpool Marine Credit Co v Wilson* (1872) 7 Ch App 507 at 511; *Keith v Burrows* (1876) 1 CPD 722 at 736; *Croshaw v Lyndhurst Ship Co* [1897] 2 Ch 154 at 155.
- 4 *Peruvian Guano Co Ltd v Dreyfus Bros & Co* [1892] AC 166, HL.
- 5 *Rawson v Rawson* (1864) 11 LT 595; *Taylor v Eckersley* (1876) 2 ChD 302, CA; *Manchester and Liverpool District Banking Co v Parkinson* (1888) 22 QBD 173, CA; *Charles Hoare & Co v Hove Bungalows Ltd* (1912) 56 Sol Jo 686, CA. As to heirlooms see *Earl of Shaftesbury v Duke of Marlborough* (1820) 1 Seton's Judgments and Orders (7th Edn) 734.
- 6 *Fuggle v Bland* (1883) 11 QBD 711, DC; *Tyrrell v Painton* [1895] 1 QB 202 at 205, CA; *Ideal Bedding Co Ltd v Holland* [1907] 2 Ch 157.
- 7 *Macnicoll v Parnell* (1887) 35 WR 773; *Campbell v Campbell and Davis* (1895) 72 LT 294.
- 8 *Hatton v Car Maintenance Co* [1915] 1 Ch 621.
- 9 *Fripp v Chard Rly Co, Fripp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1853) 11 Hare 241; *Potts v Warwick and Birmingham Canal Navigation Co* (1853) Kay 142; *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332; *De Winton v Brecon Corpn* (1859) 26 Beav 533; *Hopkins v Worcester and Birmingham Canal Proprietors* (1868) LR 6 Eq 437 at 447; *Kerry County Council v Tralee and Fenit Pier and Harbour Comrs* [1921] 1 IR 71, Ir CA. As to turnpike tolls see *Knapp v Williams* (1798) 4 Ves 430n; *Dumville v Ashbrooke* (1829) 3 Russ 98n; *Mellish v Brooks* (1840) 3 Beav 22; *Lord Crewe v Edelston* (1857) 1 De G & J 93.
- 10 *Brenan v Preston* (1852) 2 De GM & G 813.
- 11 *Chaplin v Young* (1862) 6 LT 97; *Kelly v Hutton, Kelly v McMurray* (1869) 20 LT 201.
- 12 *Howell v Dawson* (1884) 13 QBD 67, DC.
- 13 This applies as between part proprietors (*Const v Harris* (1824) Turn & R 496 at 517), but not by way of equitable execution (*Cadogan v Lyric Theatre Ltd* [1894] 3 Ch 338, CA).
- 14 *Feistel v King's College, Cambridge* (1847) 10 Beav 491.
- 15 As to the practice with regard to these see *Re Browne* [1894] 3 Ch 412 at 417, CA; *Re Auchmuty* (1908) 99 LT 462, CA; *Re Spurling* [1909] 1 Ch 199, CA.
- 16 *Cummins v Perkins* [1899] 1 Ch 16, CA.
- 17 *Candler v Candler* (1821) 6 Madd 141; *Wigram v Buckley* [1894] 3 Ch 483, CA; *Rutter v Everett* [1895] 2 Ch 872.
- 18 *Re Maudslay, Sons and Field, Maudslay v Maudslay, Sons and Field* [1900] 1 Ch 602. But it is not the practice of the court at the instance of a judgment creditor to appoint a receiver of the debtor's property generally: *Hamilton v Brogden* [1891] WN 14.
- 19 *Hope v Croydon and Norwood Tramways Co* (1887) 34 ChD 730.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vi) Property in respect of which Appointment may be Made/356. Interest must be a right of property.

356. Interest must be a right of property.

The interest affected must be a genuine right of property; thus a receiver will not be appointed of a purely voluntary allowance¹. Nor will a receiver be appointed of the future earnings of a debtor, unless the debtor has himself assigned or charged them².

An appointment will not be made if it is likely to prove ineffective³ or destructive of the property to which it relates⁴, or if the property is of no value⁵. It seems, for instance, that a receiver will not be appointed of an interest under a will which would be forfeited by the very fact of the appointment⁶.

1 *R v Lincolnshire County Court Judge* (1887) 20 QBD 167, DC (income of property held on discretionary trusts for the benefit of a debtor). As to gratuities to public servants see PARA 357 post. See also *Drewry v Barnes* (1826) 3 Russ 94; *Preston v Great Yarmouth Corp'n* (1872) 7 Ch App 655 (receiver would not be appointed of rates for paving and lighting expenses to be fixed by a future assessment and collected at a future time where the commissioners or corporation concerned were not empowered to take anything for themselves, but were obliged to apply the proceeds as directed by statute).

2 *Holmes v Millage* [1893] 1 QB 551 at 555, CA; *Cadogan v Lyric Theatre Ltd* [1894] 3 Ch 338, CA; *Edwards & Co v Picard* [1909] 2 KB 903 at 910, CA. Cf *Horwood v Millar's Timber and Trading Co Ltd* [1917] 1 KB 305 at 312, CA. See also *Hamilton v Brogden* [1891] WN 36.

3 *Mercantile Investment and General Trust Co v River Plate Trust, Loan and Agency Co* [1892] 2 Ch 303; *Edwards & Co v Picard* [1909] 2 KB 903, CA. See also *Whitworth v Whyddon* (1850) 2 Mac & G 52; *Hinton v Galli* (1854) 24 LJ Ch 121; *Re Knott End Railway Act 1898* [1901] 2 Ch 8, CA; *Harper v McIntyre* (1907) 51 Sol Jo 701.

4 *Cooper v Reilly* (1830) 1 Russ & M 560 (salary of assistant parliamentary counsel to the Treasury: see further PARA 359 note 1 post); *Hamilton v Brogden* [1891] WN 36 (future director's fees).

5 *J Walls Ltd v Legge* [1923] 2 KB 240, CA.

6 See *Campbell v Campbell and Davis* (1895) 72 LT 294. As to the construction and effect of forfeiture clauses see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 408; SETTLEMENTS.

UPDATE

313-372 Appointment by the Court

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vi) Property in respect of which Appointment may be Made/357. Personal benefits with protection.

357. Personal benefits with protection.

A receiver may not be appointed of maintenance payable to a spouse, for such allowances are intended for the personal benefit of the grantee and are therefore inalienable¹; and a gratuity granted to a public servant who retires on account of ill-health under the age of 60 years² is in the nature of a compassionate allowance intended for his personal benefit and cannot be taken in execution before it has been paid to him³. Social security benefits, child benefit and jobseeker's allowance are by statute inalienable⁴. There are various other choses in action of a personal nature which are not capable of assignment⁵.

1 See *Re Robinson* (1884) 27 ChD 160, CA; *Paquine v Snary* [1909] 1 KB 688, CA; *J Walls Ltd v Legge* [1923] 2 KB 240, CA; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 456. Cf secured periodical payments which are alienable: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 475.

2 As to an assignment of or charge on any such gratuity see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 575.

3 *Timothy v Day* [1908] 2 IR 26, Ir CA. See also *Re Wicks, ex p Wicks* (1881) 17 ChD 70, CA; *Re Webber, ex p Webber* (1886) 18 QBD 111, DC.

4 See the Social Security Administration Act 1992 s 187 (amended by the Jobseekers Act 1995 s 41(4), Sch 2 para 72). See further SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 54 et seq, 237 et seq.

5 As to such choses in action see CHOSSES IN ACTION vol 13 (2009) PARA 92 et seq.

UPDATE

313-372 Appointment by the Court

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RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

357 Personal benefits with protection

NOTE 4--1992 Act s 187 further amended: Welfare Reform Act 2007 Sch 3 para 10(31).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vi) Property in respect of which Appointment may be Made/358. Foreign property.

358. Foreign property.

A receiver may be appointed of property situated in a foreign country. Although the court is unable to enforce delivery of possession it may direct an inquiry as to the best means of obtaining possession, and make any necessary order on a defendant within its jurisdiction¹. It is usual to authorise the receiver to appoint an agent to act in the foreign country². The court will recognise a person in the position of a receiver appointed by a foreign court³, either by recognising his title to assets located in England or by setting up an auxiliary receivership in England, but only if the court is satisfied that there is sufficient connection between the defendant and the jurisdiction in which the foreign receiver was appointed⁴.

1 *Cockburn v Raphael* (1825) 2 Sim & St 453; *Houlditch v Marquis of Donegall* (1834) 8 Bli NS 301 at 343, HL; *Salt v Donegall*, *Cocker v Donegall*, *Houlditch v Donegall* (1835) L & G temp Sugd 82; *Codrington v Johnstone* (1838) 1 Beav 520; *Keys v Keys* (1839) 1 Beav 425; *Smith v Smith* (1853) 10 Hare, App II, lxxi; *Hinton v Galli* (1854) 24 LJ Ch 121; *Bolton v Curre* (1894) 70 LT 759; *Re Maudslay, Sons and Field, Maudslay v Maudslay, Sons and Field* [1900] 1 Ch 602; *Duder v Amsterdamsch Trustees Kantoor* [1902] 2 Ch 132; *Re Huinac Copper Mines Ltd, Matheson & Co v Huinac Copper Mines Ltd* [1910] WN 218. See also CONFLICT OF LAWS vol 8(3) (Reissue) PARA 394 et seq.

2 --v *Lindsey* (1808) 15 Ves 91; *Cockburn v Raphael* (1825) 2 Sim & St 453; *Codrington v Johnstone* (1838) 1 Beav 520; *Hinton v Galli* (1854) 24 LJ Ch 121; *Re Huinac Copper Mines Ltd, Matheson & Co v Huinac Copper Mines Ltd* [1910] WN 218. In *Bolton v Curre* (1894) 70 LT 759 the existing agent of an Irish estate was appointed.

3 *Lepage v San Paulo Copper Estates Ltd* (1917) 33 TLR 457.

4 *Schemmer v Property Resources Ltd* [1975] Ch 273, [1974] 3 All ER 451.

UPDATE

313-372 Appointment by the Court

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358 Foreign property

NOTE 1--In the case of the appointment of a receiver in respect of current and future debts of a third party situated abroad, it is important that the third party debtor is not in danger of being compelled to pay twice: see *Masri v Consolidated Contractors International (UK) Ltd (No 2)* [2008] EWCA Civ 303, [2009] QB 450, [2008] 2 All ER (Comm) 1099.

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359. Salaries and pensions.

A receiver may not be appointed of property, such as the salaries of public officers¹, which, either by express statutory enactment or on grounds of public policy, is incapable of assignment². Generally, public pensions awarded exclusively for past services are capable of assignment³, and, although (subject to the exercise of the court's discretion in respect of pension rights on divorce⁴) naval, military and air force pensions are by statute inalienable⁵, certain sums arising from the commutation of military pensions⁶ may be the subject of a receivership order⁷. A receiver may be appointed of a pension awarded as compensation for the abolition of a public office⁸, of the retiring pension of a county court judge or of a judge of a Crown colony⁹, and of the pensions of military officers not in the service of the Crown¹⁰; but not of a civil service pension¹¹, or of a social security pension¹², or of a pension granted as a perpetual memorial of national gratitude for public services¹³, or, it appears, of any annuity

granted by the Crown as incidental to the creation of a peerage¹⁴. A receiver may be appointed of the profits of an ecclesiastical office¹⁵ but not of the retiring pension of an incumbent¹⁶.

1 In *Palmer v Vaughan* (1818) 3 Swan 173 it was doubted whether a clerk of the peace was a 'public officer' within the meaning of this rule, and a receiver was appointed only for the purpose of securing the profits of the office pending a decision; but cf *Palmer v Bate* (1821) 2 Brod & Bing 673. The clerk to the deputy registrar of the Prerogative Court of Canterbury was held not to be a 'public officer': *Aston v Gwinnell* (1829) 3 Y & J 136. A fellowship at the universities is not a 'public office' for this purpose: *Feistel v King's College, Cambridge* (1847) 10 Beav 491. In the earlier case of *Berkeley v King's College, Cambridge* (1830) 10 Beav 602, a receiver was refused on an interlocutory motion apparently because the nature of the emoluments attaching to the office was not disclosed: see *Feistel v King's College, Cambridge* supra at 499. The refusal in *Cooper v Reilly* (1829) 2 Sim 560 (affd 1 Russ & M 560) to appoint a receiver of the salary of assistant parliamentary counsel to the Treasury is perhaps to be supported on the ground that the appointment would have resulted in the salary being stopped, and would therefore have been nugatory; cf paras 346, 356 ante.

2 As to choses in action not capable of assignment see CHOSSES IN ACTION vol 13 (2009) PARA 92 et seq; and *Arbuckle v Cowtan* (1803) 3 Bos & P 321 at 328. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 398; CIVIL PROCEDURE vol 12 (2009) PARA 1500; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 535.

3 As to such pensions see CHOSSES IN ACTION vol 13 (2009) PARAS 94-96.

4 See the Pensions Act 1995 s 166; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 961-963.

5 As to naval, military and air force pensions see ARMED FORCES. As to payments out of public funds to persons mentally disordered see MENTAL HEALTH vol 30(2) (Reissue) PARA 628 et seq. As to police pensions see generally POLICE vol 36(1) (2007 Reissue) PARA 407 et seq.

6 The sums arising under the Pensions Commutation Act 1871 which are not within the Army Act 1955 s 203, or the Air Force Act 1955 s 203: see ARMED FORCES. See also the Finance Act 1932 s 29(3) (tax collectors).

7 *Crowe v Price* (1889) 22 QBD 429, CA; and see *Happé v Happé* [1991] 4 All ER 527, [1991] FCR 23, CA.

8 *Spooner v Payne* (1849) 2 De G & Sm 439; affd (1852) 1 De GM & G 383.

9 *Willcock v Terrell* (1878) 3 Ex D 323, CA; *Re Huggins, ex p Huggins* (1882) 21 ChD 85, CA.

10 *Heald v Hay* (1862) 3 Giff 467; *Carew v Cooper* (1863) 4 Giff 619.

11 See the Superannuation Act 1972 s 5(1), by which benefits payable under a scheme made under s 1 (as amended) to civil servants and persons in similar kinds of employment are expressly made unalienable; but see also *Sansom v Sansom* (1879) 4 PD 69; *Molony v Cruise* (1892) 30 LR 199; *Knill v Dumergue* [1911] 2 Ch 199, CA (annuity of Indian civil servant).

12 See the Pension Schemes Act 1993 s 159 (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 928.

13 *Davis v Duke of Marlborough* (1818) 1 Swan 74.

14 *Oliver v Emsonne* (1514) 1 Dyer 1b at 2a; *Davis v Duke of Marlborough* (1818) 1 Swan 74 at 82.

15 The such as a canonry (see *Grenfell v Dean and Canons of Windsor* (1840) 2 Beav 544) and, apparently, of a benefice with cure of souls, which was formerly prohibited by statute: see ECCLESIASTICAL LAW. In Ireland there was no statutory prohibition: *Stronge v Ormsby* (1828) 2 Hog 55; *Wise v Beresford* (1843) 3 Dr & War 276; *Lymberry v Helsham* (1852) 1 I Ch R 633; *Cullen v Dean and Chapter of Killaloe* (1852) 2 I Ch R 133.

16 As to such pensions see CHOSSES IN ACTION vol 13 (2009) PARA 96; ECCLESIASTICAL LAW.

UPDATE

313-372 Appointment by the Court

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359 Salaries and pensions

NOTE 6--Finance Act 1932 repealed: Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vi) Property in respect of which Appointment may be Made/360. Property already in the possession of a receiver or sequestrator.

360. Property already in the possession of a receiver or sequestrator.

The court does not as a rule appoint a receiver over property already in the possession of a receiver appointed in other proceedings¹, unless it is shown that those proceedings were collusive². A receiver may be so appointed at the instance of a prior incumbrancer, but he will not be allowed to act until the former receiver is removed³. In some cases it may be convenient that the receiver already in possession should be appointed to act for the applicant, if he is willing to do so⁴. A receiver may be appointed of the rents and profits of land in the occupation of a sequestrator⁵, but the appointment does not discharge the sequestration unless the receiver is appointed expressly in place of the sequestrator over all the sequestered property⁶.

1 *Valle v O'Reilly* (1824) 1 Hog 199; *Biddulph v Hickman* (1825) 1 Hog 244; *Wood v Hitchings*, *Goodlake v Wood* (1840) 4 Jur 858; *Chaplin v Barnett* (1911) Times, 20 December.

2 *Nothard v Proctor* (1875) 1 ChD 4, CA; *Re Maskelyne British Typewriter Ltd*, *Stuart v Maskelyne British Typewriter Ltd* [1898] 1 Ch 133, CA.

3 *Irving v Waller* (1825) 1 Hog 258; *Salt v Cooper* (1880) 16 ChD 544 at 554, CA; *Re Connolly Bros Ltd*, *Wood v Connolly Bros Ltd* [1911] 1 Ch 731 at 741, 745, CA. See also *Re Metropolitan Amalgamated Estates Ltd*, *Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497 at 502. Cf *Re Henry Pound*, *Son and Hutchins* (1889) 42 ChD 402, CA. See further PARAS 343, 353 ante, 464-466, 469 post.

4 *Duder v Amsterdamsch Trustees Kantoor* [1902] 2 Ch 132 at 144, where the first receiver was appointed under a deed.

5 *White v Bishop of Peterborough* (1818) 3 Swan 109, following *Silver v Bishop of Norwich* (1816) 3 Swan 112n. See also ECCLESIASTICAL LAW.

6 *Maynard v Pomfret* (1746) 3 Atk 468 (as explained in *Shaw v Wright* (1796) 3 Ves 22); *Reeves v Cox* (1849) 13 I Eq R 247.

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vi) Property in respect of which Appointment may be Made/361. Realisable property in relation to proceeds of crime.

361. Realisable property in relation to proceeds of crime.

A receiver may be appointed under Part VI of the Criminal Justice Act 1988¹ or Part I of the Drug Trafficking Act 1994² in relation to realisable property, that is, any property held by the defendant and any property held by a person to whom the defendant has directly or indirectly made a gift caught by the relevant Part³ of the 1988 or 1994 Act⁴. For the purposes of both Acts, 'property' includes money and all other property, real or personal, heritable or movable, including things in action and other intangible or incorporeal property⁵, and the relevant statutory provisions apply to property wherever situated⁶.

¹ See under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended); see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

² See under the Drug Trafficking Act 1994 Pt I (ss 1-41) (as amended); see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

³ See notes 1-2 supra. A gift is caught by the Criminal Justice Act 1988 Pt VI (as amended) if it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate and the court considers it appropriate in all the circumstances to take the gift into account: see s 74(10). A gift is caught by the Drug Trafficking Act 1994 if (1) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or (2) if it was made by the defendant at any time and was a gift of property (a) received by the defendant in connection with drug trafficking carried on by him or another person; or (b) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection: see s 8(1). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

⁴ See the Criminal Justice Act 1988 s 74(1); the Drug Trafficking Act 1994 s 6(2). Property is not realisable property, however, if a forfeiture order under the Misuse of Drugs Act 1971 s 27 (as amended) or the Prevention of Terrorism (Temporary Provisions) Act 1989 s 13(2), (3) or (4), or a deprivation order under the Powers of Criminal Courts Act 1973 s 43 (as amended) is in force in respect of it: see the Criminal Justice Act 1988 s 74(2) (as amended); the Drug Trafficking Act 1994 s 6(3) (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

⁵ See the Criminal Justice Act 1988 s 102(1); the Drug Trafficking Act 1994 s 62(1).

⁶ Criminal Justice Act 1988 s 102(3); Drug Trafficking Act 1994 s 62(2). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

361 Realisable property in relation to proceeds of crime

TEXT AND NOTES--Criminal Justice Act 1988 Pt VI and Drug Trafficking Act 1994 Pt I replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq). As to realisable property, see now s 83.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/362. Notice of appointment.

(vii) Notice of Appointment; Security

362. Notice of appointment.

A copy of the judgment or order appointing a receiver must be served by the party having conduct of the proceedings or, in a county court, by the proper officer, on the receiver and all other parties to the cause or matter in which the receiver has been appointed¹.

1 See RSC Ord 30 r 4; CCR Ord 32 r 3(1)(b), (2).

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/363. Discretionary requirement for security.

363. Discretionary requirement for security.

Because a receiver appointed by the court is personally liable for his acts and omissions, such a receiver may be required to give security¹ approved by the court duly to account for what he receives as receiver and to deal with his receipts as directed by the court². If a time for giving security is fixed by the order, the appointment lapses unless the security is completed within that time or an extension of time is obtained; otherwise a new order of appointment must be obtained³.

Where the receiver proposed to be appointed under Part VI of the Criminal Justice Act 1988⁴ or under the Drug Trafficking Act 1994⁵ has been appointed receiver in other proceedings under the relevant Act, it is not necessary for him to give security unless the court otherwise orders⁶.

In a county court, unless the court otherwise orders, a person other than an officer of the court who is appointed a receiver must not act as such until he has given security duly to account for what he receives and to deal with it as the court directs⁷.

1 See *Mead v Lord Orrery* (1745) 3 Atk 235 at 244.

2 See RSC Ord 30 r 2. These rules have been amended to provide greater flexibility. For the practice in the Chancery Division see the Supreme Court Practice 1997 para 30/2/1. The security is fixed in chambers on a summons to proceed on the order supported by an affidavit as to the nature and value of the property. If the order authorises the receiver to take possession at once, but does not expressly direct security to be given, the receiver's possession will be lawful and valid against a judgment creditor who subsequently levies execution, notwithstanding that security has not been given: *Morrison v Skerne Ironworks Co Ltd* (1889) 60 LT 588. However, this is not so if the receiver is not empowered to act at once and his appointment is 'upon first giving security': *Defries v Creed* (1865) 34 LJ Ch 607; *Edwards v Edwards* (1876) 2 ChD 291, CA; *Re Rollason, Rollason v Rollason, Halse's Claim* (1887) 34 ChD 495; *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373 at 393, CA; *Ridout v Fowler* [1904] 1 Ch 658 (affd on other grounds [1904] 2 Ch 93, CA). As to the costs of completing security see PARA 452 post.

3 *Re Sims and Woods Ltd, Woods v Sims and Woods Ltd* (1916) 60 Sol Jo 539. For a form of order of reappointment of a receiver where security is not completed in time see 109 L Jo 659.

4 See under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

5 See under the Drug Trafficking Act 1994 s 26 (as amended) or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

6 See RSC Ord 115 rr 8(2), 23.

7 See CCR Ord 32 r 2, the wording of which corresponds to RSC Ord 30 r 2 before its amendment in 1982 (see note 2 supra).

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

363 Discretionary requirement for security

TEXT AND NOTES 1, 2--The court may direct that before a receiver begins to act or within a specified time he must either (1) give such security as the court may determine; or (2) file and serve on all parties to the proceedings evidence that he already has in force sufficient security, to cover his liability for his acts and omissions as a receiver: CPR 69.5(1) (Pt 69 added by SI 2002/2058). The court may terminate the appointment of the receiver if he fails to (a) give the security; or (b) satisfy the court as to the security he has in force, by the date specified: CPR 69.5(2) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added). As to directions relating to security see *Practice Direction--Court's Power to Appoint a Receiver* PD 69 paras 7.1-7.3.

TEXT AND NOTES 4-6--1988 Act Pt VI and 1994 Act ss 26, 29 replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/364. Form of security.

364. Form of security.

The amount for which security is to be given must be given by guarantee in the prescribed form¹ unless the court otherwise orders². The form of guarantee is not settled by the master but brought into chambers completed. If further security is required, the guarantee is indorsed accordingly. Where a party to the action is appointed, it is sometimes on terms that he pays a lump sum into court by way of security³.

A receiver is often allowed to act at once, on the undertaking of the plaintiff to be responsible for his receipts and liabilities until security is given. That undertaking should be framed so as to extend to all liabilities which would be covered by the security when completed and not only to the receiver's receipts⁴.

1 The Chancery Masters' Practice Form 30: see RSC Ord 30 r 2(3); and the Supreme Court Practice 1997 para 30/2/1.

2 RSC Ord 30 r 2(3).

3 *Re Lloyd, Allen v Lloyd* (1879) 12 ChD 447 at 448, CA; *Niemann v Niemann* (1889) 43 ChD 198 at 199, CA. As to the form of security required in the Queen's Bench Division in cases of equitable execution see the Supreme Court Practice 1997 para 51/1-3/8; and CIVIL PROCEDURE vol 12 (2009) PARA 1504.

4 *Practice Note* [1900] WN 58.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/365. Who may be surety.

365. Who may be surety.

In the Chancery Division the security is usually given by a guarantee society. A party to the action may be accepted as surety, but a solicitor having the conduct of the cause has been rejected¹. A business partner of the receiver will not be accepted. Sureties must be sui juris and solvent, and the receiver may be required to testify to their continued solvency on examination of his accounts². Further, as one of the objects of having sureties is that they may look to the conduct of the receiver and see that he performs his duties diligently, any arrangement by which they are given a control over money coming to the receiver's hands, as a sort of

indemnity, is highly improper³. Where the security required is of large amount it may be distributed among a number of sureties⁴.

Individual sureties must, as a rule, be resident in England and Wales⁵, but in the case of corporations some latitude is allowed. The bond of a Scottish guarantee company may be accepted, provided that the requirements of the master in any particular case are complied with⁶, and the bond of a foreign company is admissible on the like condition if it has assets in England and Wales and the court is satisfied as to its solvency⁷.

If a surety goes abroad or becomes insolvent⁸ or obtains his discharge⁹, a substitute must be found and a fresh guarantee entered into; but in the event of death, no fresh security will be required, unless the estate of the deceased surety is insufficient to cover the liability under the original security¹⁰.

1 *Ryder v Dickson* (1835) (an Irish case) cited in Bennett on Receivers 107.

2 See RSC Ord 30 r 5 (applied in relation to a county court by CCR Ord 32 r 3(1)(c)); and PARA 445 et seq post.

3 *White v Baugh* (1835) 3 Cl & Fin 44 at 59, 65, HL.

4 *Acheson v Hodges* (1841) 3 I Eq R 516; *Re Macdonaghs* (1876) IR 10 Eq 269. As to the position of sureties see PARA 474 et seq post.

5 *Cockburn v Raphael* (1825) 2 Sim & St 453.

6 The requirements may be ascertained on inquiry at the chambers of the Chief Master in the Chancery Division, or from the Masters' Secretary in the Queen's Bench Division.

7 *Re Venezuela Goldfields* (undated) cited in *Aldrich v British Griffin Chilled Iron and Steel Co Ltd* [1904] 2 KB 850 at 852, CA.

8 *Lane v Townsend* (1852) 2 I Ch R 120.

9 *Vaughan v Vaughan* (1743) 1 Dick 90; *Blois v Betts* (1760) 1 Dick 336.

10 *Averall v Wade* (1841) FI & K 341.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/366. Reduction or increase of security.

366. Reduction or increase of security.

In order to reduce the amount of security to be given, money that would otherwise come into the hands of the receiver may be directed to be paid into court¹.

Where the property over which the receiver is appointed is extended or increases in value, additional security may be required²; and similarly, where the property decreases in value, an order may be obtained for reduction of security. On being appointed receiver on behalf of debenture holders, the liquidator of a company may be required to give security in addition to what he has given as liquidator³.

1 *Poole v Wood* (1832) cited in 1 Seton's Judgments and Orders (7th Edn) at 741; *Re Eagle* (1847) 2 Ph 201 (a case of a mentally disordered person); *Gardner v London, Chatham and Dover Rly Co*, *Drawbridge v London, Chatham and Dover Rly Co*, *Gardner v London, Chatham and Dover Rly Co (No 2)*, *Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 219.

2 *Marchioness of Downshire v Tyrrell* (1831) Hayes 354; *Wise v Ashe* (1839) 11 Eq R 210; *Haigh v Grattan* (1839) 1 Beav 201; *Wrixon v Vize* (1843) 51 Eq R 276; *Kelly v Rutledge* (1845) 81 Eq R 228 at 230. The additional security is given by indorsement on the guarantee: see the Supreme Court Practice 1997 para 30/2/1.

3 As to the appointment of the liquidator as receiver see *Tottenham v Swansea Zinc Ore Co Ltd* (1884) 53 LJ Ch 776; *Bartlett v Northumberland Avenue Hotel Co Ltd* (1885) 53 LT 611, CA; and see COMPANIES vol 15 (2009) PARA 1365.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/367. Continuation of appointment.

367. Continuation of appointment.

When a receiver is appointed only until judgment or further order, his continuance by the judgment is in effect a new appointment, and fresh security may be required¹.

1 See *Brinsley v Lynton and Lynmouth Hotel and Property Co* [1895] WN 53. The requirement for security is now discretionary: see PARA 363 ante.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/368. Acting without security.

368. Acting without security.

A receiver who acts without giving the security directed by the order of appointment is nonetheless liable to account¹, but the balance found due from him is a simple contract debt².

1 *Smart v Flood & Co* (1883) 49 LT 467.

2 *Re Ward, Simmons v Rose, Weeks v Ward* (1862) 31 Beav 1.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/369. When security is likely to be dispensed with.

369. When security is likely to be dispensed with.

The requirement for security is now discretionary¹. If all the parties interested in the property are sui juris and themselves nominate the receiver, security may be dispensed with at their request², but, if the nomination is made by the court on a reference to chambers, security is usually required, even though all parties are sui juris and are willing to dispense with it³.

If a testator by his will nominates a person to act as receiver of the rents and profits of realty, or if the person nominated by the parties has been employed by the testator in his lifetime as manager of the property, security may be dispensed with notwithstanding that some of the parties interested are minors⁴.

Where a receiver is appointed without salary it is not unusual to dispense with security⁵. Where trustees undertake to act as receivers without salary and to account accordingly, they will not be required to give security beyond their own bond⁶.

A receiver appointed under Part VI of the Criminal Justice Act 1988⁷ or under the Drug Trafficking Act 1994⁸ who is already appointed receiver in other proceedings under the relevant Act will not normally be required to give additional security⁹.

1 See PARA 363 ante.

2 *Ridout v Earl of Plymouth* (1737) 1 Dick 68; *Manners v Furse* (1847) 11 Beav 30; *Fraser v Burgess* (1860) 13 Moo PCC 314 at 333; *Bartlett v Northumberland Avenue Hotel Co Ltd* (1885) 53 LT 611, CA, per Chitty J.

3 *Manners v Furze* (1847) 11 Beav 30; *Tylee v Tylee* (1853) 17 Beav 583, where persons were interested who were not competent to consent. See also *Conolly v Codd* (1834) Hayes & Jo 624.

4 *Countess of Carlisle v Lord Berkley* (1759) Amb 599; *Hibbert v Hibbert* (1808) 3 Mer 681; *Gardner v Blane* (1842) 1 Hare 381; *Wilson v Wilson* (1847) 11 Jur 793 at 794.

5 *Gardner v Blane* (1842) 1 Hare 381; *Wells v Wales* (1855) 4 De GM & G 816; *Re Prytherch, Prytherch v Williams* (1889) 42 ChD 590 at 601, where a legal mortgagee in possession was himself appointed receiver without salary and without security, the mortgagor not objecting.

6 *Bainbridge v Blair* (1841) 3 Beav 421.

7 See under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

8 See under the Drug Trafficking Act 1994 s 26 (as amended) or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

9 See RSC Ord 115 rr 8(2), 23.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

369 When security is likely to be dispensed with

TEXT AND NOTES 7, 8--1988 Act Pt VI and 1994 Act ss 26, 29 replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/370. Security in cases of equitable execution.

370. Security in cases of equitable execution.

In cases of equitable execution, where the appointment of a receiver is obtained not with a view to possession, but merely as an additional remedy at the same time as a charging order is obtained on the property¹, security may be dispensed with if the plaintiff and the receiver undertake not to act without the leave of the court². Where the judgment creditor is willing to act personally, he himself may be appointed receiver without salary and without security³, and such an appointment has been made even where immediate possession was contemplated⁴. Where the judgment debt and costs do not exceed £50, security is usually dispensed with in the Queen's Bench Division, and it may be dispensed with for larger sums on the plaintiff undertaking to answer for the acts and defaults of the receiver⁵.

1 As to charging orders see the Charging Orders Act 1979 s 1 (as amended); RSC Ord 50 r 1(1); and CIVIL PROCEDURE vol 12 (2009) PARA 1467 et seq.

2 *Re Watkins, ex p Evans* (1879) 13 ChD 252 at 253, CA; *Hewett v Murray* (1885) 54 LJ Ch 572.

3 *Beamish v Stephenson* (1886) 18 LR Ir 319; *Underhay v Read* (1887) 20 QBD 209, CA; *Macnicoll v Parnell* (1887) 35 WR 773.

4 *Walmsley v Mundy* (1884) 13 QBD 807 at 808, CA.

5 As to receivers in cases of equitable execution see generally the Supreme Court Practice 1997 para 51/1-3/9; and CIVIL PROCEDURE vol 12 (2009) PARA 1497 et seq. The requirement for security is now discretionary: see PARA 363 ante.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/371. Unpaid vendor as receiver.

371. Unpaid vendor as receiver.

Where the applicant, as unpaid vendor and equitable mortgagee, is virtually the owner of the property and the property is in immediate danger of destruction, he may be appointed receiver and manager without salary and without security in spite of opposition¹.

1 *Boyle v Bettws Llantwit Colliery Co* (1876) 2 ChD 726, where the lease of a colliery was in danger of forfeiture owing to the insolvency of the purchasing company, and the mine itself in danger of destruction owing to the inability of the company to work it or to keep down rising water. See also PARA 369 note 5 ante. The requirement for security is now discretionary: see PARA 363 ante.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(2) APPOINTMENT BY THE COURT/(vii) Notice of Appointment; Security/372. Security in matters of urgency.

372. Security in matters of urgency.

Where the delay incident to the completion of security might result in the loss or deterioration of the property, and especially in the case of mortgagees or debenture holders whose security is in jeopardy, a named person is often appointed on motion to act at once as receiver¹, the plaintiff undertaking to be answerable for what he may receive or become liable to pay² before the completion of his security or before a receiver is duly appointed at chambers³, and the order may then proceed to direct that security be given by a certain date, or that a proper person be appointed receiver, as the case may be. Under similar circumstances, the plaintiff himself may be appointed interim receiver without security on his undertaking not to deal with the property except under the direction of the court⁴. Where the application is made ex parte, an undertaking in damages may also be required⁵, but this is not usual⁶.

1 *Makins v Percy Ibotson & Sons* [1891] 1 Ch 133.

2 See *Re Debenture-Holders' Actions* [1900] WN 58.

3 *Sumsion v Crutwell* (1833) 31 WR 399; *Truman & Co v Redgrave* (1881) 18 ChD 547 at 550; *Boehm v Goodall* [1911] 1 Ch 155 at 156.

4 *Taylor v Eckersley* (1876) 2 ChD 302, CA; *Hyde v Warden* (1876) 1 Ex D 309, CA, where a plaintiff appellant was appointed receiver without security pending an appeal, on his undertaking to abide by any order the court might make, there being nothing for him to receive and only expenditure to be incurred in the preservation of the property; *Taylor v Neate* (1888) 39 ChD 538, where the plaintiff in a partnership action was appointed interim receiver and manager without salary and without security. See also PARA 348 ante.

5 *Rawson v Rawson* (1864) 11 LT 595; *Taylor v Eckersley* (1876) 2 ChD 302, CA; *Evans v Lloyd* [1889] WN 171.

6 *Re Patrick, Bills v Tatham* (1888) 32 Sol Jo 798. The requirement for security is now discretionary: see PARA 363 ante.

UPDATE

313-372 Appointment by the Court

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

RSC Ords 30, 51 replaced by CPR Sch 1 RSC Ords 30, 51, revoked by SI 2002/2058. As to the procedure applicable to the court's power to appoint a receiver see now CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(3) EFFECT OF APPOINTMENT BY THE COURT/(i) Effect of Appointment against Parties, their Tenants and Debtors/373. Receiver's right to possession.

(3) EFFECT OF APPOINTMENT BY THE COURT

(i) Effect of Appointment against Parties, their Tenants and Debtors

373. Receiver's right to possession.

By the order for the appointment of a receiver the court assumes control of the property affected, and from that time the parties to the action retain possession only as custodians for the court¹. However, unless the receiver is authorised to take possession at once², he may not, when nominated, take possession until he has completed his security³, and even then he may not compel delivery of possession until an order directing delivery of possession has been obtained and served on the parties⁴, but such a direction is usually inserted in the order of appointment⁵, whether made at the trial or on an interlocutory application⁶. The order for possession may be enforced by order for committal⁷, or by writ of possession in the case of land⁸, or by writ of assistance in the case of specific chattels⁹, but these writs or orders may not be issued or made unless a time has been limited within which possession must be delivered¹⁰. Where the mortgagor is in occupation, he is usually ordered to deliver up possession to the receiver, or he may be given the opportunity to attorn tenant at a rent with sureties¹¹.

The appointment of a receiver operates as an injunction restraining the parties to the action from receiving any part of the property affected by the appointment¹².

The appointment of a receiver in an administration action deprives the executor of the right of obtaining possession of the assets¹³.

1 *Peruvian Guano Co v Dreyfus Bros & Co* [1892] AC 166 at 187 and at 195, HL. A forfeiture clause in a will is not brought into operation by the appointment of a receiver of the estate of a mentally disordered person: *Re Oppenheim's Will Trusts, Westminster Bank v Oppenheim* [1950] Ch 633, [1950] 2 All ER 86. See also WILLS vol 50 (2005 Reissue) PARA 751.

2 *Morrison v Skerne Ironworks Co Ltd* (1889) 60 LT 588.

3 *Defries v Creed* (1865) 34 LJ Ch 607; *Edwards v Edwards* (1876) 2 ChD 291, CA; *Re Rollason, Rollason v Rollason, Halse's Claim* (1887) 56 LT 303; *Re Roundwood Colliery Co, Lee v Roundwood Colliery Co* [1897] 1 Ch 373, CA; *Ridout v Fowler* [1904] 1 Ch 658 (affd on other grounds [1904] 2 Ch 93, CA). However, money collected by the plaintiff's solicitor pending completion of the receiver's security must be regarded as collected on behalf of the receiver and handed to him on completion of his security without any deduction in respect of a solicitor's lien for costs or an executor's right of retainer: *Wickens v Townshend* (1830) 1 Russ & M 361; *Re Birt, Birt v Burt* (1883) 22 ChD 604. As to security see PARA 363 et seq ante.

4 *Dove v Dove* (1784) 2 Dick 617; *Ferguson v Tadman* (1819), cited in 2 Sim at 401; *Green v Green* (1829) 2 Sim 430; *Crow v Wood* (1850) 13 Beav 271; *Randfield v Randfield* (1859) 7 WR 651; *Re Della Rocella's Estate* (1892) 29 LR Ir 464.

5 *Hawkes v Holland* [1881] WN 128, CA; *Edgell v Wilson* [1893] WN 145.

6 *Ind Coope & Co v Mee* [1895] WN 8. A receiver of foreign property must take the necessary steps to obtain possession in accordance with the local law: see *Re Maudslay, Sons and Field, Maudslay v Maudslay, Sons and Field* [1900] 1 Ch 602; and PARA 358 ante.

7 See RSC Ord 45 rr 1-5. See also *Mullarkey v Donohoe* (1885) 16 LR Ir 365; *Re Sacker, ex p Sacker* (1888) 22 QBD 179 at 185, CA.

8 RSC Ord 45 rr 3, 13; *Hall v Hall* (1878) 47 LJ Ch 680. As to writs of possession see CIVIL PROCEDURE vol 12 (2009) PARA 1267.

9 *Cazet de la Borde v Othon* (1874) 23 WR 110; *Wyman v Knight* (1888) 39 ChD 165; *Re Maudslay, Sons and Field, Maudslay v Maudslay, Sons and Field* [1900] 1 Ch 602 at 611. As to writs of assistance see CIVIL PROCEDURE vol 12 (2009) PARA 1271.

10 See RSC Ord 42 r 2; *Savage v Bentley* (1904) 90 LT 641.

11 *Pratchett v Drew* [1924] 1 Ch 280. If the mortgagor remains in possession after being adjudicated bankrupt, the mortgagee may proceed against him for possession in the Chancery Division (see RSC Ord 88) without making the trustee in bankruptcy a party to the proceedings, but notice should be given to him. It has been said not to be the practice to order delivery of possession to the receiver of mortgaged land as distinct

from possession of stock-in-trade and effects: *National Provincial Bank of England Ltd v United Electric Theatres Ltd* (1916) as reported in 85 LJ Ch 106 at 113. See further MORTGAGE vol 77 (2010) PARA 563.

12 *Baxter v West* (1858) 28 LJ Ch 169; *Re Sartoris's Estate, Sartoris v Sartoris* [1892] 1 Ch 11 at 22, CA; *Tyrrell v Painton* [1895] 1 QB 202 at 206, CA; *Brown, Janson & Co v Hutchinson & Co* [1895] 1 QB 737 at 739, CA; *Re Harrison and Bottomley* [1899] 1 Ch 465 at 471, CA; *Re Marquis of Anglesey, Countess De Galve v Gardner* [1903] 2 Ch 727; *Ridout v Fowler* [1904] 1 Ch 658 at 663-664; *Ideal Bedding Co Ltd v Holland* [1907] 2 Ch 157; *Re A Debtor, ex p Peak Hill Goldfield Ltd* [1909] 1 KB 430, CA. See also PARA 381 note 1 post.

13 *Kirk v Houston* (1843) 5 I Eq R 498; *Minford v Carse and Hunter* [1912] 2 IR 245 at 273, Ir CA.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(3) EFFECT OF APPOINTMENT BY THE COURT/(i) Effect of Appointment against Parties, their Tenants and Debtors/374. Effect of appointment as against mortgagee.

374. Effect of appointment as against mortgagee.

The appointment of a receiver by a mortgagee out of court does not of itself prevent the mortgagee from afterwards issuing a writ indorsed with a statement of claim¹ and obtaining summary judgment², provided that no money has come to the hands of the receiver; but, if the receiver has received money, and the amount due from the mortgagor is in consequence uncertain, leave to defend the action will be given³. Moreover, if the receiver has been appointed by the court in a foreclosure action, the issue of such a writ is unnecessary and improper⁴.

1 The proceedings must be in the Chancery Division: see RSC Ord 88 r 2.

2 See under RSC Ord 14. See also CIVIL PROCEDURE.

3 *Lynde v Waithman* [1895] 2 QB 180, CA. See also CIVIL PROCEDURE.

4 *Earl Poulett v Viscount Hill* [1893] 1 Ch 277, CA; *Williams v Hunt* [1905] 1 KB 512, CA.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(3) EFFECT OF APPOINTMENT BY THE COURT/(i) Effect of Appointment against Parties, their Tenants and Debtors/375. Order against tenants for payment of rent.

375. Order against tenants for payment of rent.

As against tenants, the receiver is entitled to an order for attornment and payment of rent to him. This is usually in the order of appointment¹, but payment cannot be enforced until the order has been obtained and served on the tenants².

An order directing a tenant to pay rent to the receiver could formerly be enforced by attachment³, and may still be enforced by sequestration⁴. If after service of the order a tenant refuses to pay rent, the receiver may obtain leave to distrain⁵ or to bring an action for the recovery of the land⁶, and the remedy of recovery is available against a defendant who retains possession under a collusive tenancy agreement at an inadequate rent⁷. If the possession by an alleged tenant has been taken after and with notice of the order, he may be brought before the court to justify his refusal without being made a party to the action⁸.

1 *Underhay v Read* (1887) 20 QBD 209 at 210, CA. In *Hills v Webber* (1901) 17 TLR 513, CA, Stirling LJ doubted whether tenants could be directed to pay a moiety of their rents to a receiver representing one of two joint owners.

2 *Mitchel v Duke of Manchester* (1750) 2 Dick 787; *Hobhouse v Hollcombe* (1848) 2 De G & Sm 208; *Hollier v Hedges* (1853) 2 I Ch R 370; *Hobson v Sherwood* (1854) 19 Beav 575; *Mullarkey v Donohoe* (1885) 16 LR Ir 365.

3 *Mitchel v Duke of Manchester* (1750) 2 Dick 787; *Batchelor v Blake* (1824) 1 Hog 98; *Anon* (1824) 2 Mol 499; *Brown v O'Connor* (1828) 2 Hog 77; *Brennan v Kenny* (1852) 2 I Ch R 579; *Williams v Williams* (1863) 11 WR 635.

4 *Church Temporalities Comrs of Ireland v Harrington* (1883) 11 LR Ir 127 at 136. See also the Debtors Act 1869 ss 4, 8 (as amended); RSC Ord 45 rr 1, 5, 13; and CIVIL PROCEDURE.

5 *Mills v Fry* (1815) 19 Ves 277, Coop G 107; *Fitzpatrick v Eyre* (1824) 1 Hog 171; *Anon* (1826) 1 Hog 335; *Lucas v Mayne* (1826) 1 Hog 394; *Langley v Aylmer*, *Spiller v Mellifont* (1841) 3 I Eq R 492.

6 *Lord Mansfield v Hamilton*, *Hobhouse v Hamilton* (1804) 2 Sch & Lef 28; *Fitzgerald v Fitzgerald* (1843) 5 I Eq R 525. See also *Murtin v Walker* (1837) Sau & Sc 139, where leave to bring ejectment was refused on special grounds. As to proceedings by a receiver see PARAS 418-422 post.

7 *Comyn v Smith* (1823) 1 Hog 81.

8 *Reid v Middleton* (1823) Turn & R 455; *Walton v Johnson* (1848) 15 Sim 352.

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376. Payment to landlord by a tenant after notice of order.

Although a tenant who has not been served with an order directing payment of rent to a receiver is justified in continuing to pay rent to his landlord, yet, if in fact he has notice of the appointment and consequently knows that the landlord is no longer entitled to receive the rent, he cannot resist payment over again to the receiver¹ unless he can plead compulsion of law². A receiver for an equitable mortgagee is entitled to rents as against a person who obtains a garnishee order provided he gives notice to the tenants to pay rent to him; an equitable mortgagee obtains no priority by giving notice to tenants to pay rents to him³.

1 *Brown v O'Connor* (1828) 2 Hog 77; *Mullarkey v Donohoe* (1885) 16 LR Ir 365. See also *Lord Ashburton v Nocton* [1915] 1 Ch 274, CA, where payment to the debtor after registration of a writ of elegit (now abolished) was held invalid against the judgment creditor.

2 *Underhay v Read* (1887) 20 QBD 209, CA. See also *Church Temporalities Comrs of Ireland v Harrington* (1883) 11 LR Ir 127.

3 *Vacuum Oil Co v Ellis* [1914] 1 KB 693, CA. A second mortgagee now may hold a legal estate and give an effectual notice: see MORTGAGE vol 77 (2010) PARA 101 et seq.

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377. Arrears of rent.

A receiver of rents is entitled to all arrears unpaid at the date of the order for his appointment¹. Tenants who pay such arrears to their landlord before they have notice of the order will not be compelled to pay a second time to the receiver, but any party to the action who, with notice of the order, collects arrears of rent or takes securities for the amount due may be compelled to hand them over to the receiver².

1 *Codrington v Johnstone* (1838) 1 Beav 520 at 524; *Abbott v Stratton* (1846) 9 I Eq R 233 at 243; *Moore v Marquis of Donegal* (1847) 11 I Eq R 364 at 368; *Hollier v Hedges* (1853) 2 I Ch R 370; *Russell v Russell* (1853) 2 I Ch R 574; *McDonnell v White* (1865) 11 HL Cas 570 at 583; *Underhay v Read* (1887) 20 QBD 209, CA; *Re Lord Annaly*, *Crawford v Lord Annaly* (1891) 27 LR Ir 523; *Re Ind Coope & Co Ltd*, *Fisher v Ind Coope & Co Ltd*, *Knox v Ind Coope & Co Ltd*, *Arnold v Ind Coope & Co Ltd* [1911] 2 Ch 223, where a mortgagee's receiver was entitled as against an assignee for value of the mortgagor. As to the rights of a first mortgagee who applies for the discharge of the receiver appointed at the instance of a puisne incumbrancer see *Re Metropolitan Amalgamated Estates Ltd*, *Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497; and MORTGAGE vol 77 (2010) PARAS 409, 421.

2 *Hollier v Hedges* (1853) 2 I Ch R 370; *Russell v Russell* (1853) 2 I Ch R 574. As to the position of tenants see further *John v John* [1898] 2 Ch 573 at 579, CA; and PARA 410 et seq post.

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378. Occupation rent ordered against defendant.

If the order directs payment of an occupation rent by a defendant in occupation of any part of the premises¹, this constitutes him a tenant only from the date of the order, and does not entitle the receiver, at any rate until the rights of the parties have been determined in the action, to any payment in respect of his previous possession²; nor may a receiver distrain upon the goods of a defendant in possession who has not been constituted a tenant³.

1 *Everett v Belding* (1852) 22 LJ Ch 75; *Randfield v Randfield* (1859) 7 WR 651; *Re Burchnall*, *Walker v Burchnall* [1893] WN 171.

2 *Lloyd v Mason* (1837) 2 My & Cr 487; *Yorkshire Banking Co v Mullan* (1887) 35 ChD 125.

3 *Griffith v Griffith* (1751) 2 Ves Sen 400.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(3) EFFECT OF APPOINTMENT BY THE COURT/(i) Effect of Appointment against Parties, their Tenants and Debtors/379. Appointment over interests of tenant for life.

379. Appointment over interests of tenant for life.

The appointment of a receiver over the beneficial interest of a tenant for life under the Settled Land Act 1925 does not prevent the tenant for life from exercising the statutory powers, which are vested in him as trustee; and, if he unreasonably refuses to exercise the powers, application may be made for an order authorising the trustees to do so¹. Subject to certain

exceptions, however, no settlement created on or after 1 January 1997 is a strict settlement and no settlement is deemed to be made under that Act thereafter².

1 See *Re Shawdon Estates Settlement* [1930] 2 Ch 1, CA (trustee in bankruptcy); and SETTLEMENTS.

2 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 65.

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380. Locus standi of receiver in appeal from receiving order.

A receiver appointed in a partnership action has no locus standi to appeal against a receiving order made against the firm, whatever the rights of the partners may be¹.

1 *Re Jameson and Sandys, ex p Cresswell and Jameson* (1891) 8 Morr 278, CA.

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381. Position of debtors.

The position of debtors is in some respects similar to that of tenants. The order operates as an injunction to prevent the debtor from paying to a party to the action; after notice of the order he may not, therefore, obtain a valid receipt from the judgment debtor¹. A debtor may be ordered to pay his debt to the receiver, even though no person exists in whose name an action could be brought to enforce it; and refusal to comply with an order for payment to the receiver may be treated as a contempt of court², if the debtor had proper notice of the application for the order and an opportunity of disputing the debt³. The appointment of a receiver of book debts of a trader, afterwards adjudicated bankrupt, does not take them out of the order and disposition of the bankrupt unless the appointment is followed by notice to the debtors⁴.

1 See *Tyrrell v Painton* [1895] 1 QB 202, CA; *Ideal Bedding Co v Holland* [1907] 2 Ch 157; *Re A Debtor, ex p Peak Hill Goldfield Ltd* [1909] 1 KB 430, CA; *Eastern Trust Co v McKenzie, Mann & Co Ltd* [1915] AC 750, PC; and also *Giles v Kruyer* [1921] 3 KB 23, where it was in effect held that an order appointing a receiver over a debtor's current account at a bank did not prevent the bank from honouring cheques which the debtor drew, although it had notice of the order. This is now of doubtful authority, but it might be possible to support the case by its special facts. Cf para 373 text and note 12 ante.

2 *Acheson v Hodges* (1841) 3 I Eq R 516; *Kirk v Houston* (1843) 5 I Eq R 498. See also *Wood v Hitchings* (1840) 2 Beav 289; *Croshaw v Lyndhurst Ship Co* [1897] 2 Ch 154 at 160, 162. As to contempt see generally CONTEMPT OF COURT.

3 *Re Potts, ex p Taylor* [1893] 1 QB 648, CA.

4 *Rutter v Everett* [1895] 2 Ch 872. It is questionable whether this is so where bankruptcy intervenes before notice could be given: see *Re Neal, ex p Trustee* [1914] 2 KB 910.

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382. Rights and liabilities of parties in relation to strangers.

Possession by the receiver, although it necessarily displaces possession of the owner or occupier to some extent for the purposes of the appointment¹, does not interfere with the rights and liabilities of the parties to the action in relation to strangers².

It is not such an interruption of possession as prevents time running in favour of the defendant as against strangers to the action, although it does prevent it running in favour of strangers as against the party obtaining the appointment³.

Although a receiver appointed by the court is not an agent and may not, therefore, give an acknowledgment of the existence of a debt on behalf of any principal⁴, yet payment of interest by a receiver appointed at the instance of a mortgagee is clearly payment on behalf of the mortgagor and as such acknowledgment of the debt, and, where a receiver is empowered to pay debts generally, payment of an instalment may stop time running against the creditor⁵. A receiver must not pay statute-barred debts unless specifically so ordered⁶.

¹ I.e. except, perhaps, in the case of a person under disability, such as a minor: see *Sharp v Carter* (1735) 3 P Wms 375 at 379.

² *Re Butler's Estate* (1863) 13 I Ch R 453; *Moir v Blacker* (1890) 26 LR Ir 375, Ir CA; *Re Ind Coope & Co Ltd, Fisher v Ind Coope & Co Ltd, Knox v Ind Coope & Co Ltd, Arnold v Ind Coope & Co Ltd* [1911] 2 Ch 223; *Minford v Carse and Hunter* [1912] 2 IR 245, Ir CA. As to the effect of the appointment as regards contracts see PARAS 432-435, 488-489 post.

³ As to possession by the court through a receiver see LIMITATION PERIODS vol 68 (2008) PARA 1088.

⁴ *Whitley v Lowe* (1858) 25 Beav 421; affd 2 De G & J 704. See also LIMITATION PERIODS vol 68 (2008) PARA 1198.

⁵ As to part payment, and by and to whom payment may be made, see LIMITATION PERIODS vol 68 (2008) PARA 1197 et seq. As to payments by a receiver appointed out of court see PARA 307 ante.

⁶ See *Hibernian Bank v Yourell (No 2)* [1919] 1 IR 310 (receiver appointed out of court). Cf *Re Fleetwood and District Electric Light and Power Syndicate* [1915] 1 Ch 486; *Re Art Reproduction Co Ltd* [1952] Ch 89 (winding up). See also LIMITATION PERIODS vol 68 (2008) PARA 1198.

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(ii) Effect of Appointment as against Persons other than Parties, their Tenants and Debtors

383. Third person in possession and purchaser.

As against a stranger to the action who is in actual possession, the appointment of a receiver is of no effect¹.

An order appointing a receiver and any delivery in execution or other proceeding pursuant to the order are void against a purchaser of land to which the order relates unless it is registered as a land charge² or, if the land is registered land, unless a caution has been entered³.

1 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 116, 118; *Johnes v Cloughton* (1822) Jac 573; *Morrogh v Hoare* (1842) 5 I Eq R 195 at 199; *Evelyn v Lewis* (1844) 3 Hare 472; *Salt v Cooper* (1880) 16 ChD 544, CA; *Underhay v Read* (1887) 20 QBD 209, CA; *Engel v South Metropolitan Brewing and Bottling Co* [1891] WN 31.

2 See the Land Charges Act 1972 ss 6, 8 (as amended); and LAND CHARGES.

3 See the Land Registration Act 1925 s 59 (as amended). See also LAND REGISTRATION.

UPDATE

383 Third person in possession and purchaser

NOTE 3--Land Registration Act 1925 repealed and replaced by the Land Registration Act 2002; see LAND REGISTRATION.

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384. Claim to possession by third person.

A stranger who is not in possession at the date of the appointment, although his rights are not affected, will not be allowed to assert them without the leave of the court¹, unless the order is made expressly without prejudice to his rights². Thus, an action for possession may not be brought against the receiver without the leave of the court³, and, where such an action has been brought by leave of the court and judgment recovered, the judgment cannot, without leave, be enforced by writ of possession as against the receiver⁴. So also, when a receiver has been appointed over leaseholds, the landlord may not distrain for rent without the leave of the court⁵; nor may a distraint for rates be levied without leave⁶. If the receiver was appointed in an administration action, he may not recover rent from the executors⁷.

1 *Johnes v Cloughton* (1822) Jac 573; *Hawkins v Gathercole* (1852) 1 Drew 12 at 17; *Randfield v Randfield, ex p Garland* (1860) 1 Drew & Sm 310 at 314; *Searle v Choat* (1884) 25 ChD 723, CA; *Re Henry Pound, Son and Hutchins* (1889) 42 ChD 402 at 420, 422, CA. As to the rights of a prior mortgagee see *Re Metropolitan Amalgamated Estates Ltd, Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497; and MORTGAGE vol 77 (2010) PARA 564.

2 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 115; *Underhay v Read* (1887) 20 QBD 209, CA. Cf *Walmsley v Mundy* (1884) 13 QBD 807, CA.

3 *Bryan v Cormick* (1788) 1 Cox EQ Cas 422; *Angel v Smith* (1804) 9 Ves 335; *Brooks v Greathed* (1820) 1 Jac & W 176; *Hawkins v Gathercole* (1852) 1 Drew 12 at 18; *Re Battersby's Estate* (1892) 31 LR Ir 73. In *Lees v Waring* (1825) 1 Hog 216 and in *Evelyn v Lewis* (1844) 3 Hare 472, such an action was restrained by injunction. Cf *Townsend v Somerville* (1824) 1 Hog 99, where the plaintiff did not have notice of the appointment of a receiver when he brought his ejectment. Where an action would formerly have been restrained by injunction, a stay of proceedings may now be obtained: see the Supreme Court Act 1981 s 49(3).

4 *Morris v Baker* (1903) 73 LJ Ch 143.

5 *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104 at 118; *Re Sutton's Estate, Sutton v Rees* (1863) 1 New Rep 464; *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260 at 261, CA; *Re New City Constitutional Club Co, ex p Purssell* (1887) 34 ChD 646 at 660, CA. See also DISTRESS vol 13 (2007 Reissue) PARA 1031. As to a landlord's statutory right of distress against a receiver in bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 686 et seq.

6 *Re British Fuller's Earth Co Ltd, Gibbs v British Fullers' Earth Co Ltd* (1901) 17 TLR 232. See also *De Montmorency v Pratt* (1849) 12 I Eq R 411.

7 *Minford v Carse and Hunter* [1912] 2 IR 245, Ir CA.

UPDATE

384 Claim to possession by third person

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force on 1 October 2009: SI 2009/1604).

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385. Judgment creditor.

A judgment creditor may not, without the leave of the court, levy execution on property in the hands of a receiver¹, even though his judgment was obtained before the appointment of the receiver², or attach money in the hands of a receiver which has been directed to be paid to the judgment debtor³, or retain possession of any goods he may have seized⁴; nor is the judgment debtor allowed to sue the receiver for damages for seizure of goods⁵.

1 *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104; *Potts v Warwick and Birmingham Canal Navigation Co* (1853) Kay 142. See also CIVIL PROCEDURE.

2 *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332.

3 *De Winton v Brecon Corp'n (No 2)* (1860) 28 Beav 200. He may, however, obtain an order attaching payments directed to be made in an administration action: see PARA 392 post.

4 *Morrison v Skerne Ironworks Co Ltd* (1889) 60 LT 588.

5 *Re Potter, ex p Day* (1883) 48 LT 912. His remedy is to apply for relief to the court which appointed the receiver: *Re Potter, ex p Day* supra.

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386. Judgment creditors of company.

A receiver appointed on behalf of debenture holders¹ is entitled to take possession of all assets comprised in their security. His right prevails over that of a judgment creditor who has taken goods in execution but not actually sold them², or who has attached debts by garnishee proceedings but not actually obtained payment³. His right also prevails over that of a solicitor to whom a sum of money has been handed to meet costs not yet incurred⁴. He may not, however, claim money paid to the sheriff to release the goods⁵, nor money paid to the garnishor before crystallisation of the security of the debenture holders⁶.

1 As to when such a receiver is an administrative receiver see PARA 302 ante.

2 *Re Standard Manufacturing Co* [1891] 1 Ch 627, CA; *Taunton v Sheriff of Warwickshire* [1895] 2 Ch 319 at 323, CA. However see also *Robinson v Burnell's Vienna Bakery Co Ltd* [1904] 2 KB 624; and COMPANIES vol 15 (2009) PARAS 1275-1276.

3 *Norton v Yates* [1906] 1 KB 112; *Cairney v Back* [1906] 2 KB 746; *Sinnott v Bowden* [1912] 2 Ch 414 at 421. See also *Evans v Rival Granite Quarries Ltd* [1910] 2 KB 979 at 990, 997, 1001, CA, where no receiver had been appointed; and CIVIL PROCEDURE.

4 *Re British Tea Table Co (1897) Ltd, Pearce v British Tea Table Co (1897) Ltd* (1909) 101 LT 707.

5 *Robinson v Burnell's Vienna Bakery Co Ltd* [1904] 2 KB 624; *Heaton and Dugard Ltd v Cutting Bros Ltd* [1925] 1 KB 655, DC.

6 *Robson v Smith* [1895] 2 Ch 118.

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387. After-acquired property.

The title of a trustee in bankruptcy to after-acquired property of a bankrupt prevails over that of a receiver by way of equitable execution¹.

1 See *Hosack v Robins (No 2)* [1918] 2 Ch 339, CA (charging order); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 435.

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388. Tenant's right of action.

A tenant who had been erroneously committed for contempt of court could not bring an action against the receiver for false imprisonment. His proper course was to apply for compensation¹. It has been held that a tenant will not be allowed to sue the receiver or his authorised agent in replevin or for unnecessary violence in levying a distress².

1 *Batchelor v Blake* (1824) 1 Hog 98.

2 *Swaby v Dickon* (1833) 5 Sim 629 at 631; *Birch v Oldis* (1837) Sau & Sc 146; *Re Persse, Re Joyce* (1845) 8 I Eq R 111; *Parr v Bell* (1846) 9 I Eq R 55.

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389. Exercise of rights by leave of the court.

On any application by a stranger to enforce his rights, the court will examine the claim and either give effect to it by an order in the action or, if this is impracticable, allow any necessary proceedings to be taken outside the action¹.

1 *Gomme v West* (1772) 2 Dick 472; *Angel v Smith* (1804) 9 Ves 335; *Brooks v Greathed* (1820) 1 Jac & W 176 at 178; *Townsend v Somerville* (1824) 1 Hog 99; *Empringham v Short* (1844) 3 Hare 461; *Wastell v Leslie* (1846) 15 Sim 453n; *Randfield v Randfield, ex p Garland* (1861) 3 De GF & J 766; *Searle v Choat* (1884) 25 ChD 723, CA; *Re Maidstone Palace of Varieties Ltd, Blair v Maidstone Palace of Varieties Ltd* [1909] 2 Ch 283; *Re Botibol, Botibol v Botibol* [1947] 1 All ER 26.

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390. Rights of landlord.

A landlord whose rent is in arrear may be granted either an order on the receiver for payment out of money received by him¹, or leave to distrain², or to proceed under a writ of possession³, or to re-enter⁴, or leave generally to take such proceedings as he may be advised⁵. A landlord's fiduciary capacity, as a member of a partnership holding the tenancy, raises no equity capable of defeating his rights as landlord⁶. If the goods and chattels liable to distress have been sold by the receiver appointed in an administration action, the landlord may obtain an order for payment out of the proceeds of sale, provided he has asserted his right to distrain prior to sale, but not otherwise⁷; and a landlord who alleges that the lease has been forfeited for breach of covenant may be allowed to continue proceedings for possession against the receiver, notwithstanding that they were commenced without the leave of the court⁸. A judgment for possession, rent and mesne profits does not entitle a lessor to recover rent from a receiver for debenture holders in possession⁹.

1 *Neate v Pink* (1846) 15 Sim 450 at 452 (on appeal (1851) 3 Mac & G 476); *Balfe v Blake* (1850) 1 I Ch R 365; *Great Eastern Rly Co v East London Rly Co* (1881) 44 LT 903, CA; *O'Hagan v North Wingfield Colliery Co* (1882) 26 Sol Jo 671; *Jacobs v Van Boonen, ex p Roberts* (1889) 34 Sol Jo 97, DC.

2 *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104 at 118; *O'Hagan v North Wingfield Colliery Co* (1882) 26 Sol Jo 671; *Hand v Blow* [1901] 2 Ch 721 at 737, CA.

3 *Morris v Baker* (1903) 73 LJ Ch 143.

4 *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260, CA; *Hand v Blow* [1901] 2 Ch 721 at 724, 737, CA.

5 *Walsh v Walsh* (1839) 1 I Eq R 209; *Cramer v Griffith* (1840) 3 I Eq R 230.

6 *Brenner v Rose* [1973] 2 All ER 535, [1973] 1 WLR 443. See also PARTNERSHIP vol 79 (2008) PARA 118.

7 *Re Sutton's Estate, Sutton v Rees* (1863) 1 New Rep 464; *Hand v Blow* [1901] 2 Ch 721, CA; *Re British Fullers' Earth Co Ltd, Gibbs v British Fullers' Earth Co Ltd* (1901) 17 TLR 232, where the same rule was applied on a summons in a debenture holder's action in respect of a right of distress for rates. Where the receiver has sold the leasehold interest, the landlord cannot claim against the fund in court: *Re JW Abbott & Co Ltd, Abbott v JW Abbott & Co Ltd* (1913) 30 TLR 13.

8 *Gowar v Bennett* (1847) 9 LTOS 310.

9 *Re Westminster Motor Garage Co, Boyers v Westminster Motor Garage Co* (1914) 84 LJ Ch 753. As to when such a receiver is an administrative receiver see PARA 302 ante.

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391. Rights of annuitants and other persons with paramount interests.

The grantee of an annuity secured by a term, whose right is paramount to that of the parties to the action, may obtain leave to bring proceedings for possession¹; but the court generally examines a claim under an alleged adverse title before allowing proceedings to be taken². So also a public authority may be allowed to exercise a statutory right of distress for non-payment of rates or penalties³ provided the right is paramount to the rights of the parties⁴.

1 *Brooks v Greathed* (1820) 1 Jac & W 176; but if the annuity is a family charge the term is equitable only. As to enforcement of equitable rights against the estate owner see the Settled Land Act 1925 s 16; and REAL PROPERTY vol 39(2) (Reissue) PARA 184 et seq; SETTLEMENTS.

2 *Angel v Smith* (1804) 9 Ves 335; *Houlditch v Wallace* (1838) 5 Cl & Fin 629 at 667, HL.

3 *Pegge v Neath District Tramways Co* [1895] 2 Ch 508; *Re Marriage, Neave & Co, North of England Trustee, Debenture and Assets Corp v Marriage, Neave & Co* [1896] 2 Ch 663, CA.

4 *Reeve v Medway (Upper) Navigation Co* [1905] WN 75.

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392. Rights of judgment creditors.

A judgment creditor may be granted either an order on the receiver for payment of what is due to him¹, or leave to levy execution², and, if necessary, to take proceedings for possession notwithstanding the possession of the receiver³. A judgment creditor of a tenant for life or other beneficiary to whom the receiver in an administration action has been directed to pay rents or make periodic payments out of income may obtain an order attaching such payments, so far as the money is in the hands of the receiver, until his debt is satisfied⁴. An individual debenture holder who recovers judgment for his own benefit after the appointment of a receiver may not issue execution against the company, for his only right is to be paid equally with other

debenture holders ranking with him⁵. When a receiver has been appointed in a partnership action, a judgment creditor of the firm is generally given a charge on the assets, on his undertaking to deal with the charge according to the direction of the court⁶. This enables priority to be given to the costs, charges and expenses of realisation and to the receiver's remuneration and gives priority to the creditor. Alternatively, the receiver may be directed to pay the judgment creditor out of money in his hands after deduction of the costs of realisation and the receiver's remuneration, or in special circumstances the creditor may be given leave to issue execution⁷. The solicitor in the cause may obtain a similar order in respect of his costs, on the ground that the assets have been recovered or preserved by his action⁸.

1 *Lewis v Lord Zouche* (1828) 2 Sim 388; *Smith v Great Eastern Rly Co, ex p Thurgood* (1868) 18 LT 18; *Mitchell v Weise, ex p Friedheim* [1892] WN 139; *Re Ryland's Glass and Engineering Co Ltd, York City and County Banking Co Ltd v Ryland's Glass and Engineering Co Ltd* (1904) 118 LT Jo 87. The order will not, however, be made without the intervention of the court where the receiver of a railway undertaking has been directed to pay working expenses with liberty to the parties to apply as to payments: *Brocklebank v East London Rly Co* (1879) 12 ChD 839.

2 *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104 at 125; *Potts v Warwick and Birmingham Canal Navigation Co* (1853) Kay 142. See also CIVIL PROCEDURE.

3 *Townsend v Somerville* (1824) 1 Hog 99; *Lees v Waring* (1825) 1 Hog 216. Where a court order has by mistake put a receiver in possession of goods, the proper course for a judgment creditor claiming an interest in the goods is to move to discharge the order or apply to be examined in respect of his interest: *Fowler v Haynes* (1863) 2 New Rep 156. A writ of execution in the High Court or warrant of execution in the county court must not issue without the leave of the court where any goods to be seized thereunder are in the hands of a receiver appointed by the court: see RSC Ord 46 r 2(1)(e); CCR Ord 26 r 5(1)(d).

4 *Re Cowans' Estate, Rapier v Wright* (1880) 14 ChD 638; following *Re Warwick and Worcester Rly Co, Prichard's Claim, ex p Turner, ex p Smith* (1860) 2 De GF & J 354, where money in the hands of an official manager was similarly attached; discussed and partly dissented from in *Webb v Stenton* (1883) 11 QBD 518 at 525, 527, CA. See also PARAS 386, 391 ante.

5 *Bowen v Brecon Rly Co, ex p Howell* (1867) LR 3 Eq 541. See also COMPANIES vol 15 (2009) PARA 1747.

6 *Kewney v Attrill* (1886) 34 ChD 345; *Brand v Sandground* (1901) 85 LT 517. See also PARTNERSHIP vol 79 (2008) PARA 165.

7 *Newport v Pougher* [1937] Ch 214, [1937] 1 All ER 276, CA.

8 See the Solicitors Act 1974 s 73(1); *Ridd v Thorne* [1902] 2 Ch 344; and LEGAL PROFESSIONS vol 66 (2009) PARA 1011.

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393. Rights of other persons interested.

The owner of machinery on premises in the occupation of a receiver and manager may obtain leave to remove it¹. This is the case where machinery is let under a hire purchase agreement and affixed to land; the interest of the owner has priority to claims of debenture holders². A person desiring to construct works authorised by statute on land over which a receiver has been appointed may be given leave to make proposals in chambers for acquiring the necessary rights or interests³. A prior mortgagee may have an order discharging the receiver and letting him into possession, even though he is a defendant, provided he has in no way submitted to be bound by the proceedings⁴.

1 *Cumberland Union Banking Co v Maryport Hematite Iron and Steel Co, Re Maryport Hematite Iron and Steel Co* [1892] 1 Ch 415.

2 *Re Morrison, Jones and Taylor Ltd, Cookes v Morrison, Jones and Taylor Ltd* [1914] 1 Ch 50, CA.

3 *Tink v Rundle* (1847) 10 Beav 318; *Richards v Richards* (1859) John 255. It is not permissible to proceed, without the leave of the court, against the receiver to obtain possession of the land under statutory powers: *Tink v Rundle* supra.

4 *Langton v Langton* (1855) 7 De GM & G 30; *Walmsley v Mundy* (1884) 13 QBD 807 at 817, CA; *Re Metropolitan Amalgamated Estates Ltd, Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497. See also the cases cited at para 472 notes 1-2 post; and MORTGAGE vol 77 (2010) PARAS 409, 564.

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394. How application by persons other than parties, their tenants and debtors should be made.

The application to the court should be made in the action in which the receiver was appointed, and not by independent proceedings¹, even though the claim is against the receiver for acts in excess of his authority²; but such proceedings may be allowed to continue if they do not prejudice the rights of the parties to the action³. An applicant for leave to bring an action, notwithstanding the appointment of a receiver, need not show a clear legal right; if the court is satisfied that there is really a question to be tried, leave is granted⁴. Leave may be granted for an action to be brought against a receiver appointed by the court by a person at whose instance he was appointed⁵.

1 *Morgan v Smith* (1830) 1 Mol 541; *Smith v Earl of Effingham* (1839) 2 Beav 232; *De Montmorency v Pratt* (1849) 12 I Eq R 411; *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104.

2 *Searle v Choat* (1884) 25 ChD 723, CA. See also *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260 at 267, CA.

3 *Lewis v Lord Zouche* (1828) 2 Sim 388. See also *Largan v Bowen* (1803) 1 Sch & Lef 296; but it appears that, having regard to the Supreme Court of Judicature (Consolidation) Act 1925 ss 41, 43 (repealed) (see EQUITY vol 16(2) (Reissue) PARAS 498-499), application should always be made in the action: *Searle v Choat* (1884) 25 ChD 723, CA.

4 *Empringham v Short* (1844) 3 Hare 461; *Randfield v Randfield, ex p Garland* (1861) 3 De GF & J 766; *Lane v Capsey* [1891] 3 Ch 411. As to interference with a receiver see PARAS 395-398 post.

5 *LP Arthur (Insurance) Ltd v Sisson* [1966] 2 All ER 1003, [1966] 1 WLR 1384, distinguishing *Re Potter, ex p Day* (1883) 48 LT 912, DC.

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(iii) Interference with Receiver's Rights

395. Liability for interference.

Any interference with the possession of a receiver appointed by the court is a contempt of court¹ and renders the offending party liable to committal, although this extreme remedy is not enforced where there has been an excusable mistake², or where an injunction will suffice³; and the offending party may be excused on payment of costs⁴. The fact that the appointment of the receiver has been improperly obtained does not justify interference with his possession; so long as the order stands it must be respected⁵.

1 *Angel v Smith* (1804) 9 Ves 335; *Re Bechstein's Business Trusts, Berridge v Bechstein* (1914) 58 Sol Jo 864, where a circular to the effect that to trade with an enemy firm of which a receiver had been appointed would be unpatriotic was held to be a contempt. See also CONTEMPT OF COURT.

2 *Ward v Swift* (1848) 6 Hare 309 at 314; *Re Mead, ex p Cochrane* (1875) LR 20 Eq 282 at 287.

3 *Johnes v Cloughton* (1822) Jac 573; *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104; *A-G v St Cross Hospital* (1854) 18 Beav 601.

4 *Hawkins v Gathercole* (1852) 1 Drew 12; *General Share and Trust Co v Wetley Brick and Pottery Co* (1882) 20 ChD 260 at 261, CA.

5 *Russell v East Anglian Rly Co* (1850) 3 Mac & G 104 at 117; *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332 at 353; *Penney v Todd* (1878) 26 WR 502; *Re Watkins, ex p Evans* (1879) 13 ChD 252 at 256, CA; *Re Battersby's Estate* (1892) 31 LR Ir 73; *Pegge v Neath District Tramways Co* [1895] 2 Ch 508, CA (on appeal [1896] 1 Ch 684, CA).

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396. Instances of interference.

Interference with the possession of a receiver may be caused in various ways, for example, by entering as a stranger under a claim of right upon land in the receiver's possession¹; by bringing an action for possession of land against him without leave of the court that appointed him²; by taking forcible possession of estates of the rents and profits of which a receiver has been appointed³; by attempting to collect rents after his appointment⁴; by removing chattels after hearing the order for a receiver and an injunction made in court, but before the order has been drawn up⁵; by taking forcible possession, as holder of a bill of sale, of chattels in the receiver's possession⁶; by issuing, without the leave of the court, a sequestration of the profits of a living of which a receiver has been appointed previously⁷; by offering personal violence to the receiver⁸; by attaching debts due to a company after a receiver has been appointed in a debenture holders' action⁹; by levying an execution upon partnership assets in the possession of a receiver¹⁰; and by interfering in the management of a business in the hands of a receiver by taking the management out of his hands¹¹, or injuring the business by sending circulars to the customers¹², or inducing employees to leave it and take employment in a competing business¹³. In all these cases the interference may be restrained by injunction, or, if necessary, by committal¹⁴. Any threatened proceedings against a receiver in respect of trespass or wrongful seizure of goods instituted without the leave of the court will be restrained, unless the court is satisfied that the receiver has acted in excess of his authority¹⁵. It seems that entry into possession by a remainderman or landlord after determination of the interest (for life or years) in respect of which the receiver was appointed is technically an interference with the possession of the court¹⁶, but not a contempt to be visited with punishment¹⁷.

1 *Fripp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1855) 11 Hare 241.

- 2 *Angel v Smith* (1804) 9 Ves 335; *Re Battersby's Estate* (1892) 31 LR Ir 73.
- 3 *Broad v Wickham* (1831) 4 Sim 511.
- 4 *Anon* (1824) 2 Mol 499; *Langford v Langford* (1835) 5 LJ Ch 60; *Thomas v Thomas* (1842) FI & K 621; *Crow v Wood* (1850) 13 Beav 271; *Delacherois v Wrixon* (1850) 2 Ir Jur 66 at 89; *Hollier v Hedges* (1853) 2 I Ch R 370; *Mullarkey v Donohoe* (1885) 16 LR Ir 365.
- 5 *Skip v Harwood* (1747) 3 Atk 564.
- 6 *Re Mead, ex p Cochrane* (1875) LR 20 Eq 282.
- 7 *Hawkins v Gathercole* (1852) 1 Drew 12.
- 8 *Fitzpatrick v Eyre* (1824) 1 Hog 171; *Mahon v Mahon* (1840) FI & K 18 (rescue of distress). Cf *Ford v Head* (1845) 8 I Eq R 371.
- 9 *Re Derwent Rolling Mills Co Ltd, York City and County Banking Co Ltd v Derwent Rolling Mills Co Ltd* (1904) 21 TLR 81 (affd (1905) 21 TLR 701, CA), where the remedy by injunction was withheld on special grounds.
- 10 *Lane v Sterne* (1862) 3 Giff 629.
- 11 *Re Plant, ex p Hayward* (1881) 45 LT 326, CA.
- 12 *Helmore v Smith (No 2)* (1886) 35 ChD 449, CA; *Dixon v Dixon* [1904] 1 Ch 161, where employees were induced to leave and landlord approached; *King v Dopson* (1911) 56 Sol Jo 51; *Re Bechstein's Business Trusts, Berridge v Bechstein* (1914) 58 Sol Jo 864.
- 13 *Dixon v Dixon* [1904] 1 Ch 161. In this case an injunction was granted to restrain the interference: see PARTNERSHIP VOL 79 (2008) PARA 165.
- 14 For other instances of interference with a receiver amounting to contempt of court see *Wardle v Lloyd* (1827) 2 Mol 388; *Cronin v M'Carthy* (1840) FI & K 49; *Dorman v Dorman* (1841) 3 I Eq R 385; *Hayden v Shearman* (1852) 2 I Ch R 137; *Parker v Pocock* (1874) 30 LT 458. Cf *O'Kelly v Gregg* (1838) Jo & Car 76.
- 15 *Aston v Heron* (1834) 2 My & K 390; *Re Persse, Re Joyce* (1845) 8 I Eq R 111; *Parr v Bell* (1846) 9 I Eq R 55; *Re Potter, ex p Day* (1883) 48 LT 912; *Re Maidstone Palace of Varieties Ltd, Blair v Maidstone Palace of Varieties Ltd* [1909] 2 Ch 283; *Re Hutton (A Bankrupt), Mediterranean Machine Operations Ltd v Haigh* [1969] 2 Ch 201, [1969] 1 All ER 936.
- 16 *Re Stack, Stack v Royse* (1861) 12 I Ch R 246 at 250.
- 17 *Britton v M'Donnell* (1843) 5 I Eq R 275.

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397. When interference not restrainable.

If the order of appointment does not clearly show over what property the receiver is appointed, interference with his possession under a claim of right will not be restrained¹. Similarly, if the appointment of a receiver is conditional on his giving security, interference with his possession before he completes his security does not amount to contempt of court².

A tenant who continues to pay rent to his landlord, knowing that a receiver has been appointed, cannot be attached for contempt unless he has been actually served with notice of the appointment³; nor is a tenant guilty of contempt who, after an order for payment of rent to a receiver, pays it, under threat of proceedings, to a mortgagee in possession who is not a party to the action⁴.

No contempt is committed by a third person who, without knowledge, buys property which is sold in breach of an agreement between the vendor and the receiver⁵.

1 *Crow v Wood* (1850) 13 Beav 271. In the case of property over which the receiver cannot be appointed (eg unpaid capital of a railway undertaking: *Re Birmingham and Lichfield Junction Rly Co* (1881) 18 ChD 155), attachment does not amount to interference with the possession of the receiver (Companies Clauses Consolidation Act 1845 s 36; *Re West Lancashire Rly Co* (1890) 63 LT 56).

2 *Defries v Creed* (1865) 34 LJ Ch 607; *Edwards v Edwards* (1876) 2 ChD 291, CA.

3 *Mullarkey v Donohoe* (1885) 16 LR Ir 365.

4 *Underhay v Read* (1887) 20 QBD 209, CA.

5 *Re Humphrey, Densham v Ray* (1920) 55 L Jo 52.

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398. Interference with foreign assets.

When a receiver is appointed of the rents of land abroad, a defendant who prevents payment to the receiver is guilty of contempt, and, if he is not himself within the jurisdiction, his property within the jurisdiction may be sequestrated till he purges his contempt¹.

1 *Langford v Langford* (1835) 5 LJ Ch 60. It is not contempt for a person not a party to the action to attempt to obtain possession of foreign assets in priority to the receiver: see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 396.

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(4) POWERS AND DUTIES OF A RECEIVER

(i) Collection of Property

399. Limitation of duties.

The duty of a receiver appointed by the court is limited to collecting the property of which he is appointed receiver and paying all money received into court, or as the court may direct¹.

1 As to when a receiver becomes entitled to take possession see PARA 373 ante. Cf the limited rights of a receiver over the property which he receives with those of a manager: see PARAS 488-492 post. For the duties of a receiver or manager of property of a registered industrial and provident society see the Industrial and Provident Societies Act 1965 s 43; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2456-2457. As to directions by the court concerning the duty of a receiver see *A-G v Schonfeld* [1980] 3 All ER 1, [1980] 1 WLR 1182. As to the exercise of powers conferred on a receiver under the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 see the Criminal Justice Act 1988 s 82; the Drug Trafficking Act 1994 s 31; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

UPDATE

399 Limitation of duties

NOTE 1--1988 s 82 and 1994 Act s 31 replaced by Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

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400. Collection of debts.

A receiver appointed to collect debts may exercise a reasonable discretion in giving time for payment, especially if by so doing he gains some collateral advantage for the creditors, such as security or additional security¹.

When a debt or right of action is of doubtful value or only enforceable at disproportionate expense, the court sometimes authorises the receiver to offer it for sale by auction².

Where the debentures or mortgages of a limited company include uncalled capital, a receiver appointed to enforce them is entitled to have calls made³.

1 *Willatts v Kennedy* (1831) 8 Bing 5. As to the proper course to be adopted by a receiver, in possession of books and papers relating to a firm of solicitors, to make out the bills of costs see *Ray v Flower Ellis* (1912) 56 Sol Jo 724, CA.

2 *Parker v Dunn* (1845) 8 Beav 497; *Wood v Woodhouse and Rawson United* [1896] WN 4.

3 As to enforcing a mortgage of uncalled capital see COMPANIES vol 15 (2009) PARA 1266.

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401. Documents of title.

If it is desirable on the ground of convenience that documents of title should be produced to, or handed over to, the receiver, the court may order their production or delivery on such terms as may be thought fit, notwithstanding the opposition of the person legally entitled to hold them¹, or of a solicitor asserting a lien for costs².

1 *Re Ind, Coope & Co Ltd, Fisher v Ind, Coope & Co Ltd* (1909) 26 TLR 11, CA, where trustees for the debenture holders objected to handing over the deeds of property specifically mortgaged to them.

2 *Belaney v Ffrench* (1873) 8 Ch App 918; *Brunton v Electrical Engineering Corpn* [1892] 1 Ch 434; *Re Hawkes, Ackerman v Lockhart* [1898] 2 Ch 1, CA; *Re Caudery, London Joint Stock Bank v Wightman* (1910) 54 Sol Jo 444. A receiver appointed over a manor was not entitled to act as steward of the manor, and, therefore, not entitled to possession of the court rolls; but, if the acting steward had been guilty of misconduct, the lord of the manor might have obtained an order for delivery of the court rolls to the receiver in the action: *Rawes v Rawes* (1836) 7 Sim 624; *Windham v Giubilei* (1871) 40 LJ Ch 505; *Re Jennings (A Solicitor)* [1903] 1 Ch 906.

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402. Rents.

A receiver appointed to receive rents without prejudice to the rights of prior incumbrancers ought not to take possession by serving notice on the tenants to pay rent to him, after a similar notice has been served by a prior incumbrancer¹.

¹ *Searle v Choat* (1884) 25 ChD 723, CA. As to the right of a receiver to rents see PARAS 375-376, 396 ante. As to a receiver's power to distrain see DISTRESS vol 13 (2007 Reissue) PARAS 924, 925. As to the effect of the receipt of rent by a receiver appointed by a mortgagee see PARA 303 note 7 ante.

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403. Renewal of leaseholds.

When a receiver is appointed over leaseholds, an inquiry may be directed, if necessary, as to whether it will be for the benefit of the parties that a renewal should be obtained and on what terms¹.

¹ Cf *Palmer v Newport* (1824) 1 Hog 133; *Morgell v Royce* (1831) 2 Hog 235; *Mulhall v O'Brien* (1837) Sau & Sc 150.

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404. Duty to take possession and give notice.

A receiver of chattels should take possession of them at the earliest possible moment, so that they may not be comprised in the defendant's estate in case of bankruptcy¹. So, also, a receiver of book debts should give notice of his appointment to the debtors, for if he leaves the debts in the apparent ownership of the creditor he may find his title ousted by a subsequent assignee², or by the trustee in a subsequent bankruptcy³, and, in the case of debts due from a foreign firm, or indeed of any foreign property⁴, if he neglects to perfect his title or obtain possession in accordance with the local law, other persons who show greater diligence may obtain priority⁵. For the same reason a receiver of property comprised in a settlement should at once give notice of his appointment to the settlement trustees⁶.

¹ *Taylor v Eckersley* (1877) 5 ChD 740. See also *Edwards v Edwards* (1876) 2 ChD 291, CA.

2 *Wigram v Buckley* [1894] 3 Ch 483, CA; *Re Ind, Coope & Co Ltd, Fisher v Ind, Coope & Co Ltd, Knox v Ind, Coope & Co Ltd, Arnold v Ind, Coope & Co Ltd* [1911] 2 Ch 223 at 233. As to the registration in the Central Office of assignments of book debts see RSC Ord 95 r 6.

3 See the Insolvency Act 1986 s 344; *Rutter v Everett* [1895] 2 Ch 872. In *Re Neal, ex p Trustee* [1914] 2 KB 910, Horridge J disagreed with the dictum of Stirling J that if bankruptcy supervened before notice could be given, the debts were not 'in the order and disposition' of the bankrupt within the meaning of the Bankruptcy Act 1914 s 38 (repealed).

4 As to foreign property see PARA 358 ante.

5 *Re Maudslay, Sons and Field, Maudslay v Maudslay, Sons and Field* [1900] 1 Ch 602. See also CONFLICT OF LAWS vol 8(3) (Reissue) PARA 396.

6 *Ideal Bedding Co Ltd v Holland* [1907] 2 Ch 157 at 169.

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(ii) Discharge of Outgoings

405. Fire insurance premiums.

A receiver, whether appointed by the court or out of court, may insure premises against loss or damage by fire either in his own name or in the names of persons beneficially interested, or he may keep on foot an existing policy; and the premiums paid by him for this purpose are allowed in his accounts¹.

1 *Re Graham, Graham v Noakes* [1895] 1 Ch 66. A receiver appointed under the statutory power of mortgagees must insure, at the direction of the mortgagee, to the same extent as the mortgagee: see the Law of Property Act 1925 s 109(7); and MORTGAGE vol 77 (2010) PARA 483.

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406. Rent, rates, taxes and duties.

A receiver is justified in paying head rent¹, rates², taxes and other outgoings properly chargeable against him in respect of the property of which he is in occupation³. A receiver of licensed premises may, and should, pay any duties necessary to preserve the licences⁴.

1 *Walsh v Walsh* (1839) 1 I Eq R 209; *Balfe v Blake* (1850) 1 I Ch R 365; *Jacobs v Van Boonen, ex p Roberts* (1889) 34 Sol Jo 97, DC; and see PARA 429 post.

2 See *Re Mannesmann Tube Co Ltd, Von Siemens v Mannesmann Tube Co Ltd* [1901] 2 Ch 93. As to the abolition of domestic rates and their replacement by the community charge, itself replaced by the council tax, see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 521; RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 2.

3 *Madden v Wilson* (1854) 6 Ir Jur 129. As to the payment of preferential debts by a receiver appointed by debenture holders, or in a debenture holders' action see COMPANIES vol 15 (2009) PARA 1334; and as to when a receiver so appointed is an administrative receiver see PARA 302 ante. As to the powers of a receiver who is also a manager see PARAS 490-492 post; and see generally paras 429, 451 post.

4 *Re Hoy's Estate* (1892) 31 LR Ir 66.

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407. Application of rents and profits.

A receiver appointed by the court is not, it is considered, justified in paying interest on incumbrances, unless he has been expressly ordered to do so¹.

A receiver appointed at the instance of incumbrancers is usually directed to apply the rents and profits received by him in keeping down interest according to priorities. It is only in very special circumstances that he is allowed to apply them in reduction of principal². A direction to a receiver to keep down the interest on incumbrances out of rents received by him does not operate as an appropriation of such rents or of so much of them as may be required for payment of all interest. It is made for the benefit of incumbrancers only so far as they choose to avail themselves of it, and, if any of them omit to apply for their interest, they are presumed to rely on their security both for interest and principal. Therefore, if the security comes to an end by the expiration of a term or of a life interest, they are not entitled to an account of rents accrued before the determination of the security³.

1 *Anon* (1821) 6 Madd 9; *Wastell v Leslie* (1846) 15 Sim 453n.

2 *Re Kearney's Estate* (1890) 25 LR Ir 89, distinguishing *Hutchins v Hutchins* (1854) 4 I Ch R 224, where prior charges bore interest and later ones did not, and *Re Henkell's Estate* (1889) 23 LR Ir 540, where the first mortgage bore interest at 8%.

3 *Bertie v Earl of Abingdon* (1817) 3 Mer 560; *Gresley v Adderley*, *Gresley v Heathcote* (1818) 1 Swan 573; *Davy v Price* [1883] WN 226 at 227; *Flight v Camac* (1856) 25 LJ Ch 654. See also MORTGAGE vol 77 (2010) PARA 421.

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408. Employment of agent.

If, without leave, a receiver employs an agent to sell, neither the agent nor the receiver on his behalf is entitled to commission on the sale, although the court has a discretion to allow the agent such compensation for his efforts as it considers just in the circumstances¹.

1 *Re National Flying Services Ltd, Cousins v National Flying Services Ltd* [1936] Ch 271.

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(iii) Expenditure on Repairs etc

409. Leave generally necessary.

A receiver appointed by the court without express powers of management is not in general justified in incurring expenditure without the sanction of the court¹, although he may be allowed in his accounts any expenditure which is shown to have been beneficial to the parties interested². He may execute small repairs on his own initiative³, but if he spends any considerable sum on repairs without previous sanction he runs the risk of having the amount, or so much of it as is considered excessive, disallowed in his accounts⁴. An inquiry will be directed, if necessary, as to whether the expenditure has been reasonable and beneficial to the parties interested⁵; but, if the receiver has disregarded a positive direction of the court not to spend further money on repairs, such an inquiry will be refused and the payments disallowed⁶. A receiver is sometimes authorised to cut and sell timber for the purpose of repairs⁷.

1 *Fletcher v Dodd* (1789) 1 Ves 85; *Morris v Elme* (1790) 1 Ves 139; *Re Manchester and Milford Rly Co, ex p Cambrian Rly Co* (1880) 14 ChD 645 at 648, 653, CA. In Ireland, in a time of scarcity and distress, a receiver was allowed to expend money in relieving and employing poor tenants: *Re Jackson, Jackson v Jackson* (1831) 2 Hog 238.

2 *Tempest v Ord* (1816) 2 Mer 55; *Macartney v Walsh* (1830) Hayes 29n; *Whitley v Lowe* (1858) 25 Beav 421 (affd 2 De G & J 704); *Re Gomersall, ex p Gordon* (1875) LR 20 Eq 291.

3 *Thornhill v Thornhill* (1845) 14 Sim 600; *Re Graham, Graham v Noakes* [1895] 1 Ch 66 at 72. Leave is not required for small repairs estimated to cost not more than £1000, but if the limit is exceeded the master may allow the excess if the receiver establishes that he acted reasonably: see Chancery Division Practice Direction No 20 set out in the Supreme Court Practice 1997 para 862.

4 *Re Graham, Graham v Noakes* [1895] 1 Ch 66.

5 *Blunt v Clitherow* (1802) 6 Ves 799; *A-G v Vigor* (1805) 11 Ves 563; *Tempest v Ord* (1816) 2 Mer 55.

6 *Garland v Garland* (undated), cited in 6 Ves at 800.

7 *A-G v Boothby* (1860) 1 Seton's Judgments and Orders (7th Edn) 766. As to timber blown down see *Crofts v Poe* (1839) Jo & Car 193. The receiver must have regard to the statutory restrictions on the felling of trees, as to which see FORESTRY vol 52 (2009) PARA 120 et seq.

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(iv) Creation of Interests etc

410. Leave of the court required to grant leases.

When the court appoints a receiver of the rents and profits of land, it is not the practice to insert in the order an express power of leasing. The approval of the court to the grant of a lease must be obtained by summons at chambers, but the court may give a general authority to create leases or tenancies within proper limits¹, and may sanction a lease after the term has in fact begun². In the case of land abroad, with a view to preventing the delay and expense of applications to the English courts, an inquiry may be directed as to what should be the term beyond which the receiver ought not to let without leave³.

In order to pass the legal estate in the term (that is to say the true legal estate, as opposed to a legal estate by estoppel), the lease must be made in the name of the party who would have been able to demise if the receiver had not been appointed⁴; and in practice, where a receiver is in possession, the court directs the lease to be made by the legal owner or by the person in whom a statutory or conventional power of leasing is vested⁵.

However, if the title to the property is in dispute, the receiver may be authorised by the court to grant leases in his own name, and a tenant who accepts such a lease will be estopped from questioning the rights of the receiver as landlord⁶. So, too, if the receiver grants a lease without the court's sanction, as between the receiver and the tenant the lease is binding by estoppel⁷. Similarly, an attornment to the receiver by the person in possession creates a tenancy under the receiver by estoppel and gives him the legal powers of a landlord, but it does not enure for the benefit of the legal estate⁸.

Where a receiver of the income of mortgaged property or of any part of it has been appointed by the mortgagee under his statutory power⁹ without recourse to the court, the power of leasing exercisable by the mortgagee¹⁰ may be delegated by him in writing to the receiver¹¹.

1 *Morris v Elme* (1790) 1 Ves 139; *Wynne v Lord Newborough* (1790) 1 Ves 164. See also *Neale v Bealing* (1744) 3 Swan 304n. *Shuff v Holdaway* (1863) 2 Daniell's Chancery Practice (8th Edn) 1487n, which was formerly cited as authority for the proposition that a receiver could let without the sanction of the court for a period not exceeding three years can no longer, so far as that proposition is concerned, be considered good law: see *Stamford, Spalding and Boston Banking Co v Keeble* [1913] 2 Ch 96. An administrator pending suit appointed under the Supreme Court Act 1981 s 117(1) has, subject to certain statutory limitations (for which see s 117(2)), all the powers of a general administrator: see s 117(1). See also *Neale v Baily* (1875) 23 WR 418; and EXECUTORS AND ADMINISTRATORS.

2 *Re Liabilities (War-time Adjustment) Act 1941, Re Cripps* [1946] Ch 265, CA.

3 *--v Lindsey* (1808) 15 Ves 91.

4 Certain leases may be granted in the name of the estate owner where any other person is empowered to grant them: see the Law of Property Act 1925 s 8; and REAL PROPERTY vol 39(2) (Reissue) PARA 246.

5 *Shuff v Holdaway* (1863) 2 Daniell's Chancery Practice (8th Edn) 1487n. See also *Gibbins v Howell* (1818) 3 Madd 469.

6 *Dancer v Hastings* (1826) 4 Bing 2. See further ESTOPPEL vol 16(2) (Reissue) PARA 1029 et seq.

7 *Dancer v Hastings* (1826) 4 Bing 2.

8 *Evans v Mathias* (1857) 7 E & B 590. Where the premises are already subject to a lease the mere appointment of the receiver, without attornment, constitutes him the 'landlord' for the purpose of the landlord's statutory right (ie under the Landlord and Tenant Act 1709 s 1 (as amended): see CIVIL PROCEDURE; DISTRESS) to arrears of rent before goods are removed under an execution: *Cox v Harper* [1910] 1 Ch 480, CA. Where a receiver appointed by, or at the instance of, a mortgagee is in receipt of the rents and profits of land, the tenant deals with the mortgagee, and not the receiver, where the Landlord and Tenant Act 1954 and the Leasehold Reform Act 1967 apply: see the Landlord and Tenant Act 1954 s 67; the Leasehold Reform Act 1967 s 22 (as amended), Sch 3 para 9; *Meah v Mouskos* [1964] 2 QB 23, [1963] 3 All ER 908, CA; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARAS 715, 1207.

9 Ie under the Law of Property Act 1925 s 101(1)(iii): see PARA 303 ante. As to when the mortgagee is entitled to appoint a receiver see MORTGAGE vol 77 (2010) PARA 475 et seq.

10 For such powers of leasing see MORTGAGE vol 77 (2010) PARAS 345, 426. As to the effect of the receipt of rent by a receiver appointed by a mortgagee see PARA 303 note 7 ante.

11 Law of Property Act 1925 s 99(19).

UPDATE

410 Leave of the court required to grant leases

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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411. Determination of tenancies.

The receiver may without the leave of the court determine tenancies from year to year by notice to quit, even though the tenancies have been created before his appointment and the tenants have not attorned to him¹; and a notice to quit served by the receiver in his own name is a demand for possession by the landlord or his lawfully authorised agent sufficient to support a claim for double value² in any case of holding over³. The sanction of the court should be obtained before any surrender of a lease is accepted⁴.

1 *Doe d Marsack v Read* (1810) 12 East 57; *Crosbie's Lessee v Barry* (1839) Jo & Car 106. See also *Doe d Earl Manvers v Mizem* (1837) 2 Mood & R 56. A dictum to the contrary in *Wynne v Lord Newborough* (1790) 1 Ves 164 no longer represents the practice on this point.

2 *Ie* under the Landlord and Tenant Act 1730 s 1: see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 668.

3 *Wilkinson v Colley* (1771) 5 Burr 2694; *Doe d Marsack v Read* (1810) 12 East 57; *Jones v Phipps* (1868) LR 3 QB 567 at 572.

4 *Davidson v Armstrong* (1837) Sau & Sc 135.

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412. Rearrangement of tenancies.

Although a receiver is bound to let the estate to the best advantage¹, it would appear that he is not justified in dispossessing tenants without the leave of the court merely for the purpose of raising rents or of dividing the estate into fewer and larger holdings². The court does not allow rents to be reduced or arrears to be forgiven or compounded for, unless the parties interested consent³.

1 *Wynne v Lord Newborough* (1790) 1 Ves 164.

2 *Wynne v Lord Newborough* (1790) 1 Ves 164; *Lord Mansfield v Hamilton*, *Hobhouse v Hamilton* (1804) 2 Sch & Lef 28; *Alven v Bond* (1841) Fl & K 196 at 223. See also *Carmichael v Greenock Harbour Trustees* [1910] AC 274, HL, where it was held that a receiver of the tolls of a public undertaking could not increase the rates against the wish of those responsible for the management.

3 *Evans v Taylor* (1837) Sau & Sc 681; *Davis v Cotter* (1837) Sau & Sc 685.

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413. Charge for money borrowed for preservation.

When immediate expenditure is required for the preservation of property, a receiver may be authorised to borrow money for the purpose, and the amount will be charged upon the property in priority to all existing incumbrances¹; but such an order is not made unless a case of salvage is established². Thus, the receiver of the estate of a mentally disordered person was allowed to raise, by a charge on the property, a sum of money required to enable him to effect a transfer of mortgages, the holders of which were pressing for payment³.

¹ *Greenwood v Algeiras (Gibraltar) Rly Co* [1894] 2 Ch 205, CA; *Re New Zealand Midland Rly Co, Smith v Lubbock* [1901] 2 Ch 357, CA.

² As to the position when the receiver is also manager see PARA 491 post.

³ *Chaplin v Barnett* (1912) 28 TLR 256, CA (a case under the former procedure; see now RSC Ord 29 r 2; and CIVIL PROCEDURE).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(4) POWERS AND DUTIES OF A RECEIVER/(v) Disability to Purchase or to take a Lease/414. Disability to purchase arising from fiduciary relationship.

(v) Disability to Purchase or to take a Lease

414. Disability to purchase arising from fiduciary relationship.

A receiver, being in a fiduciary position towards the persons beneficially interested, may not purchase, either in his own name or through the intervention of a trustee, any part of the property over which he is appointed without the sanction of the court¹. Moreover, the court will not authorise a receiver to bid at a sale unless very special circumstances are shown, or unless all persons interested in the property are sui juris and consent², for a receiver has opportunities of acquiring and making use of information accessible only to himself, and the court might be baffled if it were to inquire in each case whether the receiver had in fact taken advantage of such opportunities³.

¹ *Alven v Bond* (1841) Fl & K 196; *Nugent v Nugent* [1908] 1 Ch 546, CA. It seems that he could not plead the Limitation Act 1980 if the purchase was afterwards attacked: see PARA 423 text and note 4 post; and see generally EQUITY vol 16(2) (Reissue) PARA 851 et seq; LIMITATION PERIODS vol 68 (2008) PARA 1140 et seq.

² *Anderson v Anderson* (1846) 9 I Eq R 23. See also *Alven v Bond* (1841) Fl & K 196 at 214.

³ *Alven v Bond* (1841) Fl & K 196; *Eyre v M'Donnell* (1864) 15 I Ch R 534; *Nugent v Nugent* [1908] 1 Ch 546, CA.

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415. Transactions set aside unless affirmed by parties sui juris.

Even though a sale has been at a fair price and without any circumstances of fraud, concealment or undue advantage such as would be sufficient to avoid the transaction in the case of a stranger, a receiver is not allowed to retain the benefit of his purchase as against the parties interested, other than a vendor who elects to stand by his bargain¹; and it would appear that the vendor himself, even though he alleges none of the recognised grounds for rescission, may have the transaction set aside on grounds of public policy².

If all parties interested are sui juris they may, of course, elect to affirm the sale³, but if any of them is under disability or objects to the sale, the court either sets aside the transaction altogether⁴ or declares that the receiver holds the property in trust for the persons who would be entitled but for the sale⁵. A declaration of this sort is not, however, made so as to prejudice a vendor who repudiates the sale⁶.

1 *Boddington v Langford* (1845) 15 I Ch R 558n; *Nugent v Nugent* [1907] 2 Ch 292, CA.

2 *Re Ronayne's Estate* (1863) 13 I Ch R 444 at 450; *Eyre v M'Donnell* (1864) 15 I Ch R 534.

3 *White v Tommy* (1836), cited in FI & K 224.

4 *Cary v Cary* (1804) 2 Sch & Lef 173. In *Alven v Bond* (1841) FI & K 196, where the money had been paid into court and the sale confirmed, the court nevertheless set aside the sale, the mortgagee-vendor not objecting, and the persons beneficially entitled undertaking to pay his demand.

5 *Nugent v Nugent* [1907] 2 Ch 292 at 295.

6 *Boddington v Langford* (1845) 15 I Ch R 558n.

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416. Receiver's charge for purchase money.

The receiver is entitled to a charge on the property with interest¹ for any purchase money he may have actually paid², and he is also allowed credit for any sums which he has expended on the property since his purchase by which the estate has benefited³.

1 The rate of interest actually allowed in *Nugent v Nugent* [1907] 2 Ch 292 was 4%; but as to the amount usually allowed by the courts see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq; CIVIL PROCEDURE vol 11 (2009) PARA 510.

2 *Nugent v Nugent* [1907] 2 Ch 292 at 295.

3 *Cary v Cary* (1804) 2 Sch & Lef 173, where, the property being leasehold, the receiver was allowed credit for a fine he had paid on taking a renewal of the lease in his own name.

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417. Disability to take a lease.

Not only is a receiver unable to purchase, but he may not even accept a lease of any part of the property committed to his charge without the sanction of the court¹. A receiver appointed over the estate of a reversioner is not, however, thereby incapacitated from purchasing the interest in a lease of the same land which the reversioner has in another right².

1 *Meagher v O'Shaughnessy* (1841), cited in Fl & K 207; *Stannus v French* (1849) 13 I Eq R 161.

2 *King v O'Brien* (1866) 15 LT 23, Ir CA.

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(vi) Institution or Defence of Proceedings

418. Proceedings to get in assets.

A receiver is justified in taking all steps necessary to get in the assets that he is appointed to collect. He may, for instance, prove in his own name in the bankruptcy of a debtor to the estate¹; and although, not being himself a creditor, he may not as a rule present a bankruptcy petition, he may do so if he has taken an assignment of a debt in his own name². He may be ordered to carry on existing proceedings in the name of a mortgagor company on the footing that his costs are to be a first charge on the assets notwithstanding that the proceedings are in effect against the plaintiff in the action in which he is appointed³.

1 *Armstrong v Armstrong* (1871) LR 12 Eq 614.

2 See *Williams v Harding* (1866) LR 1 HL 9 at 23, 26; BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 140; CHOSER IN ACTION vol 13 (2009) PARA 74.

3 *Viola v Anglo-American Cold Storage Co* [1912] 2 Ch 305.

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419. Instances in which a receiver may sue.

Although a receiver may not generally maintain an action in his own name, since no property is vested in him¹, yet if he has an independent cause of action, the fact that he is receiver does not disqualify him from suing². He may, for instance, sue as the holder of a bill of exchange or promissory note³, or as the occupier of business premises⁴, or as the bailee of chattels to whom possession has been delivered by order of the court⁵, or as the assignee of a debt⁶, or as landlord, if the letting has been in his name⁷, and he may sue on a covenant for payment of rent to himself, even though he is not a party to the lease⁸; and a receiver and manager may sue in respect of his business transactions for the recovery of goods improperly detained⁹ or for the price of goods sold and delivered by him or delivered under a contract which has been

assigned to him, although in the case of an assigned contract, this is subject to any right of set-off to which the original contractor is entitled¹⁰.

1 *Re Sartoris's Estate, Sartoris v Sartoris* [1892] 1 Ch 11 at 14, 22, CA. Cf *Kettle v Dunster and Wakefield* (1927) 138 LT 158. See also *Rodriguez v Speyer Bros* [1919] AC 59 at 75, 112, HL, where dicta in *Rombach Baden Clock Co v Gent & Son* (1915) 84 LJB 1558 were criticised.

2 *Scott v Platel* (1847) 2 Ph 229; *Re Sacker, ex p Sacker* (1888) 22 QBD 179 at 185, CA.

3 *Re Lewis, ex p Harris* (1876) 2 ChD 423; *O'Reilly v Connor, O'Reilly v Allen* [1904] 2 IR 601, Ir CA.

4 *Husey v London Electric Supply Corp* [1902] 1 Ch 411, CA.

5 *Hills v Reeves* (1882) 31 WR 209, CA, per Jessel MR; *Purkiss v Holland* (1887) 31 Sol Jo 702, CA; *Re Rollason, Rollason v Rollason, Halse's Claim* (1887) 34 ChD 495 (receiver as claimant in interpleader proceedings).

6 *Re Macoun* [1904] 2 KB 700, CA.

7 *Dancer v Hastings* (1826) 4 Bing 2. See also LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 35.

8 See the Law of Property Act 1925 s 56(1); *Lloyd v Bryne* (1888) 22 LR Ir 269, Ir CA. A receiver appointed under the statutory powers of a mortgagee may sue for rent in the name of the mortgagor or mortgagee: see the Law of Property Act 1925 s 109(3); and MORTGAGE vol 77 (2010) PARA 481.

9 *Moss SS Co Ltd v Whinney* [1912] AC 254, HL. See also TORT.

10 *Forster v Nixon's Navigation Co Ltd* (1906) 23 TLR 138; *Rother Iron Works Ltd v Canterbury Precision Engineers Ltd* [1974] QB 1, [1973] 1 All ER 394, CA. Cf *NW Robbie & Co Ltd v Witney Warehouse Co Ltd* [1963] 3 All ER 613, [1963] 1 WLR 1324, CA.

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420. Interpleader issue.

When a receiver is claimant in interpleader proceedings he is not called upon to pay the value of the goods into court in the usual way, for it is not necessary for the protection of the rival claimant that the receiver, being an officer of the court, should do more than undertake to hold the goods subject to the order of the court¹.

1 *Purkiss v Holland* (1887) 31 Sol Jo 702, CA; and see CIVIL PROCEDURE vol 12 (2009) PARA 1624.

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421. Improper proceedings.

A receiver appointed by the court who either institutes or defends proceedings without the previous sanction of the court runs the risk of having his costs disallowed if his action is not approved¹. The court does not lightly authorise proceedings if the parties interested object², especially if the receiver is a solicitor³, although it is not now the practice to give the conduct of

an action to the receiver personally⁴. If necessary, an inquiry will be directed whether it will be for the benefit of the parties interested that proceedings should be taken or defended⁵, but the parties themselves have no power to dictate whether proceedings are or are not to be taken or defended⁶.

An application made by the receiver⁷ in support of the claim of one of the parties in an action for the determination of their relative rights is improper and may be refused with costs to be paid by the receiver personally⁸.

A receiver has no vested right in his appointment which entitles him to litigate for the profits of his receivership⁹.

The appointment of a receiver pursuant to a power contained in a debenture does not necessarily divest the company of the power to pursue a course of action without consulting the receiver, even though the action could have been brought by him¹⁰.

A receiver requires (in the absence of a prior order) the leave of the court to enable funds subject to the receivership to be released to allow the defendant to defend the action¹¹.

1 *Swaby v Dickon* (1833) 5 Sim 629; *Conyers v Crosbie* (1844) 6 I Eq R 657; *Re Dunn, Brinklow v Singleton* [1904] 1 Ch 648.

2 *Dacie v John* (1824) M'Cle 575; *Murtin v Walker* (1837) Sau & Sc 139.

3 *Della Cainea v Hayward* (1825) M'Cle & Yo 272.

4 *Re Hopkins, Dowd v Hawtin* (1881) 19 ChD 61, CA. The conduct of an action may be taken from a plaintiff if his interest is adverse to other members of a class which he represents: *Re Services Club Estate Syndicate Ltd, McCandlish v Services Club Estate Syndicate Ltd* [1930] 1 Ch 78.

5 *Anon* (1801) 6 Ves 287; *Nangle v Lord Fingall* (1824) 1 Hog 142; *Cooke v Cooke* (1826) 1 Hog 182; *Birch v Oldis* (1837) Sau & Sc 146; *Callaghan v Reardon* (1837) Sau & Sc 682; *Cramer v Griffith* (1840) 3 I Eq R 230; *Bowen v Brecon Rly Co, ex p Howell* (1867) LR 3 Eq 541.

6 *Viola v Anglo-American Cold Storage Co* [1912] 2 Ch 305.

7 As to the name in which applications should be made see PARA 422 post.

8 *Comyn v Smith* (1823) 1 Hog 81.

9 *Re Joseph, ex p Cooper* (1877) 6 ChD 255, CA.

10 *Newhart Developments Ltd v Co-operative Commercial Bank Ltd* [1978] QB 814, [1978] 2 All ER 896, CA.

11 See *NMB Postbank Groep NV v Naviede* [1993] BCLC 707; *NMB Postbank Groep NV v Naviede (No 2)* [1993] BCLC 715.

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422. Name in which applications made.

The party having the conduct of the action in which the receiver has been appointed is the proper person to apply to the court¹. A receiver should not make applications in his own name unless the parties to the action have refused to do so² or have no locus standi³.

1 *Windschuegl v Irish Polishes Ltd* [1914] 1 IR 33.

2 *Miller v Elkins* (1825) 3 LJOS Ch 128; *Duke of Dorset v Crosbie* (1837) Sau & Sc 683; *Re Cooper, Cooper v Cooper* (1839) 2 I Eq R 155; *Clarke v Fisher* (1839) Sau & Sc 684; *Re Doolan* (1843) 2 Con & Law 232; *Richards v Goold* (1844) 7 I Eq R 209; *Ireland v Eade* (1844) 7 Beav 55; *Parker v Dunn* (1845) 8 Beav 497; *Re Sacker, ex p Sacker* (1888) 22 QBD 179 at 185, CA, per Fry LJ; *Boehm v Goodall* [1911] 1 Ch 155; *Re Thomas, Bartley v Thomas* [1911] 2 Ch 389 at 391.

3 *Chater v Maclean* (1855) 1 Jur NS 175, where the plaintiff's motion to have a firm of solicitors who acted for both the plaintiff and the receiver made liable for misappropriation of money paid to them by the receiver was dismissed partly on the ground that the payment was made to them as agents for the receiver, who was not moving the court. In such cases, it is desirable that the receiver should, in the first instance, apply for leave to be separately represented through the solicitors acting for the party having the conduct of the action.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(5) LIABILITIES OF A RECEIVER/(i) Losses and Improper Payments/423. Nature and duration of liability.

(5) LIABILITIES OF A RECEIVER

(i) Losses and Improper Payments

423. Nature and duration of liability.

Prima facie a receiver appointed by the court is answerable for all money that comes into his hands, or that might have come into his hands but for his own negligence or default¹, whether he has completed his security or not². Payment may be enforced even after the receiver's security has been vacated, for he remains a trustee for the parties entitled³. As such he may not, as against the parties, avail himself of the lapse of time in an action in respect of any fraud to which he was a party, or in an action to recover from him trust property or its proceeds in his possession or received by him and converted to his use⁴. Where he is paid remuneration⁵, it seems that a receiver is not entitled to claim relief from personal liability⁶ as a trustee⁷.

1 --v *Jolland* (1802) 8 Ves 72, where it was suggested, but not decided, that if delay by a receiver in paying his balances results in loss to the estate owing to a fall in the price of stocks, he may be held personally liable; *Hamilton v Lighton* (1810) 2 Mol 499; *Wilkins v Lynch* (1823) 2 Mol 499; *Re Skerretts* (1829) 2 Hog 192; *Beytagh v Concannon* (1847) 10 I Eq R 351. See also *Cary v Cary* (1804) 2 Sch & Lef 173, where an inquiry was directed whether any rents had been lost, and by whose default; *Wood v Wood* (1828) 4 Russ 558, where a solicitor who assumed the position of receiver without authority was held liable for rents lost by his neglect; *Re Plant, ex p Hayward* (1881) 45 LT 326, CA.

2 *Smart v Flood & Co* (1883) 49 LT 467.

3 *M'Can v O'Ferrall* (1841) 8 Cl & Fin 30, HL; *Seagram v Tuck* (1881) 18 ChD 296; *Re Gent, Gent-Davis v Harris* (1888) 40 ChD 190. See also LIMITATION PERIODS vol 68 (2008) PARA 1149.

4 Limitation Act 1980 s 21(1). In the case of a receiver appointed by the court, it seems that, as an officer of the court, he cannot avail himself of the lapse of time in any action: see *Re Cornish, ex p Board of Trade* [1896] 1 QB 99 at 104, CA, where Kay LJ expressed the view that a receiver appointed by the court was not within the Trustee Act 1888 s 8 (repealed), the wording of which was not, however, the same as the Limitation Act 1980 s 21, which has ultimately replaced it. In the case of receivers appointed out of court, if the action is not of the type mentioned, the mere fact that the property is trust property does not prevent time from running: see s 21(3); and see generally LIMITATION PERIODS vol 68 (2008) PARA 1140 et seq.

5 As to the remuneration of a receiver see PARAS 436-443 post.

6 He is under the Trustee Act 1925 s 61. See further TRUSTS vol 48 (2007 Reissue) PARA 1123.

7 See *Re Windsor Steam Coal Co (1901) Ltd* [1929] 1 Ch 151 at 164-165, CA, per Lawrence LJ.

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424. Degree of prudence required.

If money for which he is answerable¹ does not reach its proper destination, the receiver will be compelled to make good the loss unless he can show that he has acted with perfect regularity and has used such a degree of prudence as would be expected from a private individual in relation to his own affairs². If, for instance, he pays money temporarily into a bank to a separate receiver's account, he is not liable for loss occasioned by the failure of the bank³; but it is otherwise if he pays it into his own general account and mixes it with his own money⁴, or if he accepts for his own use interest on balances standing to the credit of his receivership banking account⁵. Again, if a receiver remits money to his own solicitor for payment into court he is not, as a rule, held liable for loss caused by the bankruptcy or default of the solicitor⁶; but if he has been directed by court order to pay certain named persons, he is answerable for loss occasioned by payment without leave to any other person⁷, including his own solicitor⁸, or the solicitor having the conduct of the cause⁹, or the solicitor representing the payees, unless, in this last case, he is able to show that the solicitor had authority to receive the money and give a discharge for it¹⁰.

1 As to money for which the receiver is answerable see PARA 423 ante.

2 *Knight v Earl of Plymouth* (1747) 1 Dick 120; *Massey v Banner* (1820) 1 Jac & W 241 at 247; *White v Baugh* (1835) 3 Cl & Fin 44 at 59, HL. See also *Lady Shaftesbury's Case* (1720) Prec Ch 558.

3 See *White v Baugh* (1835) 3 Cl & Fin 44 at 66, HL, per Lord Lyndhurst, and *Drever v Maudesley* (1844) 13 LJ Ch 433, although in both those cases the receiver was held liable on other grounds. In *White v Baugh* supra the question was raised, but not decided, as to whether the mere fact of allowing an excessive balance to accumulate in a bank would disentitle the receiver to relief in case of loss.

4 *Wren v Kirton* (1805) 11 Ves 377.

5 *Drever v Maudesley* (1844) 13 LJ Ch 433.

6 *Dixon v Wilkinson* (1859) 4 Drew 614 at 620.

7 *De Winton v Brecon Corpn (No 2)* (1860) 28 Beav 200, where a receiver appointed by the Court of Chancery had submitted to and acted upon a garnishee order made against him in the Court of Exchequer.

8 *Ind, Coope & Co v Kidd* (1894) 63 LJB 726, DC.

9 *Gurden v Badcock* (1842) 6 Beav 157, where the receiver paid money to the plaintiff's solicitor, who handed it to the plaintiff instead of to incumbrancers who had a prior right. However, it seems that in such a case the receiver is entitled to reimburse himself out of money subsequently received by him on behalf of the plaintiff.

10 *Delfosse v Crawshay* (1834) 4 LJ Ch 32; *Re Browne's Estate, ex p Sterling* (1886) 19 LR Ir 132; *Ind, Coope & Co v Kidd* (1894) 63 LJB 726, DC.

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425. Loss arising from parting with control or wilful neglect.

A receiver is liable for loss occasioned by parting with the control of the property¹ or by wilful neglect to carry out the orders of the court² or by placing money in what he knows to be improper hands, and for any loss to which his own fraud or collusion has contributed³. It is immaterial that the irregularity complained of is not in fact the immediate cause of the loss that has occurred. Thus, if a receiver enters into an improper arrangement with his sureties by which they are enabled to control the application of the money received and paid into a bank by him, he is answerable for loss caused by the failure of the bank⁴.

1 *Lady Shaftesbury's Case* (1720) Prec Ch 558; *Salway v Salway* (1831) 2 Russ & M 215 at 218 (affd sub nom *White v Baugh* (1835) 3 Cl & Fin 44 at 57).

2 *Hicks v Hicks* (1744) 3 Atk 274; *Fetnam v Kirby* (1841) 4 I Eq R 320; *Re Plant, ex p Hayward* (1881) 45 LT 326, CA.

3 *Knight v Earl of Plymouth* (1747) 1 Dick 120; *Re Potter, ex p Day* (1883) 48 LT 912.

4 *Salway v Salway* (1831) 2 Russ & M 215; affd sub nom *White v Baugh* (1835) 3 Cl & Fin 44, HL.

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426. Acts in excess of authority.

A receiver may be personally liable for acts in excess of his authority; for example for taking possession of property not included in the assets of a testator which he has been appointed to collect, although, if his action has been acquiesced in by the beneficiaries and they have had the benefit of it, he is entitled to an indemnity¹. If he commits a breach of a statutory duty, he is liable in tort to the person to whom he owes the duty².

If a receiver appointed in an administration action distributes the assets without directions from the court, an inquiry may be directed whether the payments have been properly made³.

1 *Neate v Pink* (1851) 3 Mac & G 476.

2 Eg where, with notice of preferential debts, he exhausts assets in paying other creditors (*Woods v Winkill* [1913] 2 Ch 303; see further COMPANIES vol 15 (2009) PARA 1334), or where he fails to apply money in his hands as required by the Law of Property Act 1925 s 109(8)(iv), (v) (*Leicester Permanent Building Society v Butt* [1943] Ch 308, [1943] 2 All ER 523; and see further MORTGAGE vol 77 (2010) PARA 483).

3 *Cross v Ormerod* (1801) cited in 6 Ves 800; *Armitage v Forbes* (1831) Hayes 222 at 229.

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427. Losses and expenses in carrying on business.

A receiver who is also acting as manager¹ of an estate or business is not answerable for trading losses so long as he carries on the business in a usual and proper manner in accordance with the directions of the court². He is allowed in his accounts all sums properly expended in the

discharge of his duty, even where the expenditure has not been directly sanctioned by the court³, and he is entitled to be indemnified out of assets⁴ against all liabilities properly incurred⁵; but any expenses incurred by a receiver in open disregard of the orders of the court are disallowed, whether beneficial to the property or not⁶. He may be liable in trespass to persons with paramount rights who are not parties⁷.

1 As to managers generally see PARA 482 et seq post.

2 *Morison v Morison* (1855) 7 De GM & G 214.

3 *Securities and Properties Corp Ltd v Brighton Alhambra Ltd* (1893) 62 LJ Ch 566 at 567.

4 He is not generally entitled to be indemnified by the parties personally: see *Boehm v Goodall* [1911] 1 Ch 155; and PARA 448 post.

5 *Re Bushell, ex p Izard* (1883) 23 ChD 75 at 80, CA.

6 *Garland v Garland* (undated) cited in 6 Ves at 800; *Re Langham* (1847) 2 Ph 299 (committee of a mentally disordered person).

7 See *Re Goldberg (No 2), ex p Page* [1912] 1 KB 606; *Re Simms, ex p Trustee* [1934] Ch 1, CA, where receivers appointed out of court were liable to trustees in bankruptcy. As to the necessity for the trustee in bankruptcy to elect whether to claim damages for trespass or an account of profits see *Re Simms, ex p Trustee* supra.

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428. Liability of receiver appointed in relation to realisable proceeds of crime.

Where a receiver appointed under the Criminal Justice Act 1988¹ or the Drug Trafficking Act 1994² or in pursuance of a charging order³:

- 5 (1) takes any action in relation to property which is not realisable property⁴, being action which he would be entitled to take if it were such property; and
- 6 (2) believes, and has reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence⁵.

1 Ie under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

2 Ie under the Drug Trafficking Act 1994 s 26 (as amended) or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

3 As to charging orders see the Criminal Justice Act 1988 s 78 (as amended); the Drug Trafficking Act 1994 s 27; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

4 For the meaning of 'realisable property' see PARA 361 ante.

5 See the Criminal Justice Act 1988 s 88(1); the Drug Trafficking Act 1994 s 36(1).

UPDATE

428 Liability of receiver appointed in relation to realisable proceeds of crime

TEXT AND NOTES--These provisions are now replaced by provisions of the Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq), which has removed the power of the High Court to make charging orders.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(5) LIABILITIES OF A RECEIVER/(ii) Rent, Rates, Taxes and Costs/429. Liability for rent and performance of covenants.

(ii) Rent, Rates, Taxes and Costs

429. Liability for rent and performance of covenants.

Where a receiver is appointed by the court at the instance of a mortgagee by sub-demise there is no privity of estate between him and the head lessor, and he is not, any more than the mortgagee, liable to the head lessor for rent or under the covenants¹; and there is no equity giving the lessor in these circumstances any right to a charge on a fund in court representing proceeds of sale of the leaseholds².

However, where a receiver has been appointed of the rents and profits of leasehold property, and he is placed in the position of the tenant, he is, in the first instance, bound to pay out of the rents and profits the rent due to a superior landlord³, even though the order of appointment is silent on the subject and the court has directed application of the receipts to other objects⁴. If a receiver of leaseholds omits to keep down head rent when he has money in hand available for the purpose, he may be called upon personally to make good the omission, although he will be entitled to an indemnity out of assets if he has acted in good faith and in accordance with the directions of the court⁵. However, the appointment of a receiver over leaseholds does not of itself constitute him an assignee of the lease or make him personally liable for payment of rent or performance of covenants⁶, and a receiver who pays rent in his own name does not become liable as a tenant by estoppel if the landlord has not been induced by such payment to believe that the lease has been assigned to him⁷.

1 *Hand v Blow* [1901] 2 Ch 721, CA. However, the payment is often necessary to avoid a forfeiture.

2 *Hand v Blow* [1901] 2 Ch 721, CA; *Re JW Abbott & Co Ltd, Abbott v JW Abbott & Co Ltd* (1913) 30 TLR 13. Cf *Re Westminster Motor Garage Co, Boyers v Westminster Motor Garage Co* (1914) 84 LJ Ch 753.

3 As to such payment of rent by the receiver see PARA 406 ante.

4 *Balfe v Blake* (1850) 1 I Ch R 365.

5 *Balfe v Blake* (1850) 1 I Ch R 365. See also *Walsh v Walsh* (1839) 1 I Eq R 209. In *Jacobs v Van Boonen, ex p Roberts* (1889) 34 Sol Jo 97, DC, and the earlier Irish cases, *Donovan v Sweeny* (1849) 1 Ir Jur 165, *Elliott v Elliott* (1849) 1 Ir Jur 165, and *Sherlock v Roe* (1849) 1 Ir Jur 177, the assets appear to have been sufficient to meet the landlord's claim, so that no question of personal liability arose.

6 *Hay v Swedish and Norwegian Rly Co Ltd* (1892) 8 TLR 775. Where the property over which he is appointed at the instance of incumbrancers consists of onerous leases, he may be authorised to give up possession and so leave the lessor to his rights against the mortgagor: see *Hay v Swedish and Norwegian Rly Co Ltd* supra.

7 *Justice v James* (1898) 14 TLR 385; affd (1899) 15 TLR 181, CA. As to such estoppel see ESTOPPEL vol 16(2) (Reissue) PARA 1031 et seq; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 262.

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430. Liability for water charges and income tax.

In certain circumstances the owner of premises is liable for the payment of water charges¹. In those circumstances, a receiver of the rents of premises appointed by the court is not liable to pay water charges under the Water Industry Act 1991, as he is not the 'owner' within the meaning of that Act². A receiver of the rents of premises appointed out of court, being the agent of the person by whom he is appointed³, would, however, be so liable where he actually receives the rents⁴.

A receiver on behalf of other persons is under a statutory liability to pay income tax in the place of such persons⁵.

1 le under the Water Industry Act 1991 s 144(8): see WATER AND WATERWAYS vol 100 (2009) PARA 422.

2 See *ibid* s 219(1); para 309 ante; and WATER AND WATERWAYS vol 100 (2009) PARA 22. In the case of a supply by a company to which the Waterworks Clauses Act 1847 s 72 (repealed) is still applicable, however, a receiver appointed by the court may be liable to pay water charges as, under s 72 (repealed), the person receiving the rents as receiver for any person interested in them was deemed to be the owner. As to the incorporation of certain provisions of the Waterworks Clauses Act 1847 (repealed) into the special Acts of the former metropolitan water companies see WATER AND WATERWAYS vol 100 (2009) PARA 416; and as to local water supply legislation generally see WATER AND WATERWAYS vol 100 (2009) PARAS 12-14.

3 As to the appointment of a receiver as an agent see PARA 301 ante.

4 See the Water Industry Act 1991 s 219(1) ('owner' includes the person receiving the rack rent as agent for another); and PARA 309 notes 7-9 ante. See also *Metropolitan Water Board v Brooks* [1910] 2 KB 134, where it was decided, on the different wording of the Water Companies (Regulation of Powers) Act 1887 (repealed) that a receiver appointed out of court was not liable for arrears of water rates incurred before his appointment; *affd* on other grounds [1911] 1 KB 289, CA (the person actually receiving the rents, ie the collector of rents, being held liable).

5 See the Taxes Management Act 1970 s 75; *IRC v Thompson* [1937] 1 KB 290, [1936] 2 All ER 651; and INCOME TAXATION vol 23(2) (Reissue) PARA 1247.

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431. Extent of personal liability for costs.

The costs of all proceedings in the Supreme Court being in the discretion of the court¹, receivers may be and frequently are directed to bear personally the costs of unnecessary applications or appearances², or of proceedings which have been rendered necessary by their own misconduct or default³. However, costs which have been properly and unavoidably incurred by a receiver in the discharge of his duties are allowed him in his accounts⁴, and a receiver appointed on behalf of debenture holders who has, with the sanction of the court, appeared upon an appeal which went against the company, may not be made liable for the costs of the appeal, even though the company is insolvent⁵.

1 See the Supreme Court Act 1981 s 51(1) (substituted by the Courts and Legal Services Act 1990 s 4(1)); RSC Ord 62 r 2(4); and CIVIL PROCEDURE.

2 *O'Kelly v Gregg* (1838) Jo & Car 76; *Re Doolan* (1843) 2 Con & Law 232; *Payne v Lamb* (1844) 8 I Eq R 517; *De Montmorency v Pratt* (1849) 12 I Eq R 411; *Delacherois v Wrixon* (1850) 2 Ir Jur 66.

3 *Harrison v Boydell* (1833) 6 Sim 211; *Walsh v Walsh* (1839) 1 I Eq R 209; *Fetnam v Kirby* (1841) 4 I Eq R 320; *Bertie v Lord Abingdon* (1845) 8 Beav 53; *Re Lloyd, Allen v Lloyd* (1879) 12 ChD 447, CA; *Re Suffield and Watts, ex p Brown* (1888) 36 WR 303 (revsd on another point 20 QBD 693, CA); *Bacal Contracting Ltd v Modern Engineering (Bristol) Ltd* [1980] 2 All ER 655, where it was held, inter alia, that under what is now the Supreme Court Act 1981 s 51(1) (as substituted), the court had power in a suitable case to order the receiver of a company appointed under a debenture to pay the costs of an action carried on by him after the company had been compulsorily wound up and which had been incurred after the winding-up order. Where a receiver takes over the defence of an action against a company which has gone into insolvent liquidation, the court can order that any costs awarded to the plaintiff are to be paid by the receiver and that such costs are to be treated as expenses of the receivership: *Anderson v Hyde (t/a Hyde Property Services)* [1996] 2 BCLC 144, NI CA. See also CIVIL PROCEDURE.

4 As to allowances generally see PARAS 448-455 post.

5 *Re Griffiths Cycle Corpn Ltd, Dunlop Pneumatic Tyre Co Ltd v John Griffiths Cycle Corpn Ltd* (1902) 85 LT 776, CA.

UPDATE

431 Extent of personal liability for costs

NOTES 1, 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(5) LIABILITIES OF A RECEIVER/(iii) Contracts/432. Personal liability on contracts.

(iii) Contracts

432. Personal liability on contracts.

Prima facie a receiver appointed by the court, not being an agent, is personally liable on all contracts entered into by him¹. He may of course stipulate in any particular contract that he is not to be held personally liable², or the nature of the transaction may show that he did not intend to pledge his personal credit and that the creditor did not look to it³, but the mere addition of the words 'receiver and manager' after his signature does not suffice to displace the presumption of personal liability⁴. A receiver appointed out of court is, however, an agent and so prima facie is not personally liable in respect of transactions properly entered into by him as such⁵.

1 *Re Flowers & Co* [1897] 1 QB 14, CA; *Re Glasdir Copper Mines Ltd, English Electro-Metallurgical Co Ltd v Glasdir Copper Mines Ltd* [1906] 1 Ch 365 at 378, CA, per Vaughan Williams LJ; *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd* [1910] 2 Ch 470; *Boehm v Goodall* [1911] 1 Ch 155; *Moss SS Co Ltd v Whinney* [1912] AC 254, HL. As to the position of a receiver appointed out of court see PARA 306 ante. See also COMPANIES vol 15 (2009) PARAS 1350, 1370; MORTGAGE vol 77 (2010) PARA 475 et seq.

2 *Re Glasdir Copper Mines Ltd, English Electro-Metallurgical Co Ltd v Glasdir Copper Mines Ltd* [1906] 1 Ch 365, CA.

3 *Re A Boynton Ltd, Hoffmann v A Boynton Ltd* [1910] 1 Ch 519.

4 *De Grelle & Co v Bull and Ward* (1894) 10 R 97; *Burt, Boulton and Hayward v Bull* [1895] 1 QB 276, CA; *Justice v James* (1899) 15 TLR 181 at 182, CA, per Chitty LJ; *Moss SS Co Ltd v Whinney* [1912] AC 254 at 258, 259, 263, HL.

5 As to the liability of a receiver appointed out of court see PARA 306 ante.

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433. Conveyance in pursuance of contract by receiver.

A conveyance of land for giving effect to a contract entered into by a receiver¹ must be made by the persons able to convey the legal estate free from incumbrances. The first mortgagee may not normally convey the fee simple on his own. The subsequent incumbrancers, if any, and the mortgagor must concur or a vesting order be obtained². A receiver's power under a debenture to dispose of a company's property may be exercised notwithstanding the liquidation of the company³; and the receiver may still be able to convey in the company's name⁴.

1 A conditional contract subject to approval by the court is a common practice. If no step is taken by the receiver to obtain the approval before the time fixed for completion, the purchaser may repudiate the contract and recover his deposit: *Re Sandwell Park Colliery Co, Field v Sandwell Park Colliery Co* [1929] 1 Ch 277.

2 The mortgagee may convey the fee simple only under the Law of Property Act 1925 s 104, where he exercises the power of sale. If any dispute arises as to the form of conveyance, a summons is issued for the conveyance to be settled by the judge. See also MORTGAGE vol 77 (2010) PARA 444.

3 *Sowman v David Samuel Trust Ltd* [1978] 1 All ER 616, [1978] 1 WLR 22.

4 Ie if his power of attorney survives the liquidation: see *Sowman v David Samuel Trust Ltd* [1978] 1 All ER 616 at 623, [1978] 1 WLR 22 at 30 obiter per Goulding J.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(5) LIABILITIES OF A RECEIVER/(iii) Contracts/434. Right to indemnity.

434. Right to indemnity.

The receiver, or any creditor of his who is entitled to be subrogated to his rights, is entitled to an indemnity¹ against all liabilities properly incurred by him, and this indemnity ranks as a first charge upon the assets, subject only to the costs of realisation and to the receiver's costs, charges and expenses, including his remuneration². However, a receiver appointed by the court, not being an agent or trustee for the parties, has no right of indemnity against them personally in case the assets controlled by the court prove insufficient³. The creditors of a receiver authorised to carry on a business are entitled by subrogation to be paid out of the assets in priority to creditors whose debts were incurred before the receiver's appointment⁴. A receiver appointed by the court has a right to be indemnified out of all the assets subject to the receivership, not just those in his possession. This right is not extinguished by the discharge of the receivership and the consequent return of assets to the legal owner. The receiver's lien

over the assets may exist quite independently of actual possession or a continuing right to possession⁵.

1 As to such indemnity see COMPANIES vol 15 (2009) PARA 1375; FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1260.

2 As to a receiver's costs, charges and expenses see PARA 448 post; and as to his remuneration see PARAS 436-443 post. See also generally paras 492-493 post.

3 *Boehm v Goodall* [1911] 1 Ch 155.

4 *Re Oxley, John Hornby & Sons v Oxley* [1914] 1 Ch 604, CA; *Re Healy, Healy v Oliver* [1918] 1 IR 366. See also *Dowse v Gorton* [1891] AC 190, HL.

5 *Mellor v Mellor* [1992] 4 All ER 10, [1992] 1 WLR 517.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(5) LIABILITIES OF A RECEIVER/(iii) Contracts/435. Contracts prior to appointment.

435. Contracts prior to appointment.

Contracts, other than contracts of service¹, entered into before the appointment of the receiver are not cancelled by the appointment, but the receiver incurs no personal liability under them, unless he expressly adopts them².

1 For the effect of appointment on contracts of service see PARA 489 post.

2 *Hay v Swedish and Norwegian Rly Co Ltd* (1892) 8 TLR 775; *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468 at 474, 477, CA; *Re Thames Ironworks, Shipbuilding and Engineering Co Ltd, Farrar v Thames Ironworks, Shipbuilding and Engineering Co Ltd* (1912) 106 LT 674; *Parsons v Sovereign Bank of Canada* [1913] AC 160, PC; *Consolidated Entertainments Ltd v Taylor* [1937] 4 All ER 432 (liability for rent); *Lawson (Inspector of Taxes) v Hosemaster Machine Co Ltd* [1966] 2 All ER 944, [1966] 1 WLR 1300, CA (ratification of unauthorised pre-appointment contract). See also PARA 489 post.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(i) Entitlement/436. Salary generally allowed.

(6) REMUNERATION

(i) Entitlement

436. Salary generally allowed.

A receiver appointed by the court is allowed such proper remuneration, if any, as may be authorised by the court¹, but his right is limited to the assets (in other words the assets subject to the receivership whether or not he gets possession of them) and in case of deficiency cannot be enforced against the plaintiff or other parties personally². The court can direct that such remuneration must be fixed by reference to such scales or rates of professional charges as it thinks fit or assessed by a taxing officer³. Where remuneration is assessed by a taxing officer, the provisions as to taxation of costs by a master apply and an appeal lies from the assessment

to a judge in chambers⁴. These provisions enable a court to order an assessment of a receiver's remuneration by a taxing officer on either a standard or an indemnity basis. A receiver cannot seek to interfere with a judge's exercise of discretion in favour of one particular basis⁵. A trustee who is appointed receiver is not generally entitled to remuneration⁶, but even a trustee-receiver, unless he is expressly appointed 'without salary', may be allowed remuneration if no other person equally well qualified for the position can be found or, in the case of an administration action, if the testator has authorised the payment of remuneration⁷. Moreover, if a trustee has no active duties to perform involving the receipt of money, there can be no valid objection to him being remunerated for his services as receiver⁸.

1 RSC Ord 30 r 3(1) (applied in relation to a receiver appointed in a county court by CCR Ord 32 r 3(1)(a)). As to the remuneration of a receiver appointed under the statutory power of mortgagees see the Law of Property Act 1925 s 109(6); and PARA 305 ante. As to the remuneration of a receiver appointed under the Criminal Justice Act 1988 or the Drug Trafficking Act 1994 see PARA 444 post.

2 *Boehm v Goodall* [1911] 1 Ch 155. They are enforceable by way of indemnity against the assets subject to the receivership, whether or not those assets were ever reduced into the receiver's possession: *Mellor v Mellor* [1992] 4 All ER 10, [1992] 1 WLR 517.

3 RSC Ord 30 r 3(2) (applied in relation to a county court: see note 1 supra). 'Taxing officer' means a taxing master or a district judge: r 3(4). As to the factors to be taken into account in allowing remuneration see *Mirror Group Newspapers plc v Maxwell* [1997] TLR 384 (the test is whether a reasonably prudent person faced with the same circumstances in relation to his own affairs as that facing the receiver would have done the same things; the receiver is under a duty to give close scrutiny to solicitors' bills and to decide whether the employment of solicitors for particular tasks was proper).

4 RSC Ord 30 r 3(3) (applied in relation to a county court: see note 1 supra). The relevant provisions as to taxation of costs by a master are in Ord 62 r 13. As to taxation of county court costs by a district judge see CCR Ord 38 r 2.

5 *Alliance & Leicester Building Society v Edgestop Ltd* [1995] 2 BCLC 506, CA.

6 *Sykes v Hastings* (1805) 11 Ves 363; *Pilkington v Baker*, *British Mutual Investment Co v Pilkington* (1876) 24 WR 234. The relation of trustee and beneficiary excludes any idea of remuneration except by express antecedent contract: *Re Accles Ltd*, *Hodgson v Accles Ltd* [1902] WN 164. See also *Marshall v Holloway* (1820) 2 Swan 432 at 453; *Re Freeman's Settlement Trusts* (1887) 37 ChD 148. Cf *Re Windsor Steam Coal Co (1901) Ltd* [1929] 1 Ch 151, CA, per Lawrence LJ; and see further TRUSTS.

7 *Sykes v Hastings* (1805) 11 Ves 363; *Newport v Bury* (1857) 23 Beav 30; *Re Bignell*, *Bignell v Chapman* [1892] 1 Ch 59, CA; *Morison v Morison* (1838) 4 My & Cr 215 (consignee of West Indian estate). See also PARA 353 ante.

8 *Sutton v Jones*, *Jones v Sutton* (1809) 15 Ves 584.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

436 Salary generally allowed

TEXT AND NOTES--A receiver may only charge for his services if the court (1) so directs; and (2) specifies the basis on which the receiver is to be remunerated: CPR 69.7(1) (Pt 69 added by SI 2002/2058). The court may specify (a) who is to be responsible for paying the receiver; and (b) the fund or property from which the receiver is to recover his remuneration: CPR 69.7(2) (as added). If the court directs that the amount of a receiver's remuneration is to be determined by the court (i) the receiver may not

recover any remuneration for his services without a determination by the court; and (ii) the receiver or any party may apply at any time for such a determination to take place: CPR 69.7(3) (as added). Unless the court orders otherwise, in determining the remuneration of a receiver the court must award such sum as is reasonable and proportionate in all the circumstances and which takes into account (A) the time properly given by him and his staff to the receivership; (B) the complexity of the receivership; (C) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership; (D) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and (E) the value and nature of the subject matter of the receivership: CPR 69.7(4) (as added). The court may refer the determination of a receiver's remuneration to a costs judge: CPR 69.7(5) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added). For supplementary provision relating to receiver's remuneration see *Practice Direction--Court's Power to Appoint a Receiver* PD 69 paras 9.1-9.6.

CPR 69.7 has not made a fundamental change rule that a receiver is entitled to be indemnified in respect of his remuneration out of the assets in his hands as receiver, in accordance with the applicable statutory provisions: *Capewell v Revenue and Customs Comrs* [2007] UKHL 2, [2007] 2 All ER 370.

NOTE 1--The power to appoint receivers under the 1988 Act or the 1994 Act is now exercisable under the Proceeds of Crime Act 2002.

NOTE 4--CCR Ord 38, replaced by CPR Sch 1 CCR Ord 38, revoked: SI 2004/3419.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(i) Entitlement/437. Interested party; small estate.

437. Interested party; small estate.

A legal mortgagee in possession who is himself appointed receiver is not allowed remuneration¹, although in a proper case it is possible that he might be allowed the costs of employing an agent for collection of rents²; and, generally, where a party interested is appointed receiver he is not allowed a salary³, unless by consent⁴. However, a partner appointed receiver to wind up the business is entitled to payment on the basis of quantum meruit⁵.

Where the property to be received is of small amount and involves no difficulty in collection, the court has sometimes refused to allow remuneration⁶.

1 *Re Prytherch, Prytherch v Williams* (1889) 42 ChD 590 at 601.

2 *Bonithon v Hockmore* (1685) 1 Vern 316; *Chambers v Goldwin* (1804) 9 Ves 254 at 271; *Langstaffe v Fenwick, Fenwick v Langstaffe* (1805) 10 Ves 405; *Davis v Dendy* (1818) 3 Madd 170; *Sayers v Whitfield* (1829) 1 Knapp 133 at 142, PC; *Gilbert v Dyneley* (1841) 3 Scott NR 364.

3 *A-G v Gee* (1813) 2 Ves & B 208; *Wilson v Greenwood* (1818) 1 Swan 471; *Gardner v Blane* (1842) 1 Hare 381; *Blakeney v Dufaur* (1851) 15 Beav 40; *Hoffman v Duncan* (1853) 18 Jur 69; *Rawson v Rawson* (1864) 11 LT 595; *Cookes v Cookes* (1865) 2 De GJ & Sm 526; *Sargant v Read* (1876) 1 ChD 600; *Hyde v Warden* (1876) 1 Ex D 309, CA; *Beamish v Stephenson* (1886) 18 LR 1r 319; *Re Golding* (1888) 21 LR 1r 194; *Taylor v Neate* (1888) 39 ChD 538.

4 *Earl of Fingall v Blake* (1829) 2 Mol 50; *Davy v Scarth* [1906] 1 Ch 55.

5 *Davy v Scarth* [1906] 1 Ch 55. Where he is appointed without salary, he may be allowed wages for work done personally, but this is by indulgence. He should on appointment apply for the allowance: *Harris v Sleep* [1897] 2 Ch 80, CA. See also PARTNERSHIP vol 79 (2008) PARA 165. As to quantum meruit claims generally see CONTRACT.

6 *Marr v Littlewood* (1837) 2 My & Cr 454 at 458.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/438. Determination of remuneration.

(ii) Calculation and Payment

438. Determination of remuneration.

A receiver is not entitled to any remuneration until he has accounted for all his payments and receipts¹. An application for payment may be made by summons if necessary. Occasionally, the order for taxation directs the remuneration to be fixed by the taxing master on taxation of costs². The relevant direction may specify an assessment of a receiver's remuneration by a taxing officer on either a standard or an indemnity basis. A receiver cannot seek to interfere with a judge's exercise of discretion in favour of one particular basis³.

1 *Re Ward, Simmons v Rose, Weeks v Ward* (1862) 31 Beav 1 at 12-13.

2 *Silkstone and Haigh Moor Coal Co v Edey* [1901] 2 Ch 652, CA.

3 *Alliance & Leicester Building Society v Edgestop Ltd* [1995] 2 BCLC 506, CA.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/439. Mode of calculation.

439. Mode of calculation.

There are detailed guidelines as to the amount of remuneration to be allowed to a receiver appointed by way of equitable execution in the Queen's Bench Division¹. Otherwise, there are no absolute rules for fixing the amount to be allowed. Remuneration is normally allowed on a quantum meruit basis according to the time, difficulty and degree of responsibility involved². It may be fixed as a percentage of gross receipts³, an annual salary⁴ or a lump sum⁵.

1 See the memorandum approved by the King's Bench Masters in June 1929 set out in the Supreme Court Practice 1997 para 51/1-3/10.

2 *Day v Croft* (1840) 2 Beav 488. As to quantum meruit claims generally see CONTRACT.

3 *Day v Croft* (1840) 2 Beav 488; *Prior v Bagster* (1887) 57 LT 760.

4 *Re Bignell, Bignell v Chapman* [1892] 1 Ch 59, CA.

5 *Potts v Leighton* (1808) 15 Ves 273.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/440. Special cases.

440. Special cases.

If, without applying to the court for directions, a receiver voluntarily incurs extraordinary trouble and expense beyond what his duty as receiver requires, he may be allowed remuneration in addition to his salary or commission¹, provided the extra services were properly undertaken for the benefit of the estate².

Where the remuneration of a receiver is paid by a poundage or commission on receipts, the quantum is sometimes reduced by allowing capital sums to be paid directly into court instead of passing through the receiver's hands³.

A receiver is liable to be deprived of his remuneration if he fails to submit his accounts or pay over his balances according to order⁴, and also to pay interest on the balance in his hands⁵.

As between tenant for life and remainderman, the remuneration of a receiver of income and the expenses of examining his accounts are chargeable against income, not capital⁶.

1 *Potts v Leighton* (1808) 15 Ves 273; *Re Catlin* (1854) 18 Beav 508 at 511, where it was said that a receiver would not be allowed to make an extra charge for drawing up a scheme of the property and the holding of the tenants, this being work within the ordinary scope of his duties as receiver.

2 *Malcolm v O'Callaghan* (1837) 3 My & Cr 52, CA in Ch; *Harris v Sleep* [1897] 2 Ch 80, CA (wages for personal labour), distinguishing *Re Ormsby (a minor)* (1809) 1 Ball & B 189, where a proposed fee of 30 guineas to the receiver, beyond and in addition to his out-of-pocket expenses, for his trouble in personally attending a survey was disallowed, personal attendance being apparently unnecessary.

3 *Ex p Cranmer* (1808) 1 Russ 477n; *Haigh v Grattan* (1839) 1 Beav 201; *Weale v Ireland* (1841) 5 Jur 405; *Gardner v London, Chatham and Dover Rly Co*, *Drawbridge v London, Chatham and Dover Rly Co*, *Gardner v London, Chatham and Dover Rly Co (No 2)*, *Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 219. Cf *Re Starkie, ex p Clayton* (1826) 1 Russ 476 (a case relating to mental illness).

4 *Bristowe v Needham* (1863) 11 WR 926; RSC Ord 30 rr 6, 7 (as to which see PARA 461 post); *Re St George's Estate* (1887) 19 LR 566.

5 RSC Ord 30 r 7(2) (applied in relation to a receiver appointed by a county court by CCR Ord 32 r 3(1)(e)); *Potts v Leighton* (1808) 15 Ves 273.

6 *Shore v Shore* (1859) 4 Drew 501 at 510. Subject to certain exceptions, however, no settlement created on or after 1 January 1997 is a strict settlement and no settlement is deemed to be made under the Settled Land Act 1925 thereafter: see the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 65.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

440 Special cases

TEXT AND NOTES 4, 5--See now CPR 69.9 (as added); and PARA 468.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/441. Priority of payment.

441. Priority of payment.

While a receiver's right to payment of his remuneration, costs and expenses is limited to the assets¹, he is entitled to such payment notwithstanding that the assets may be insufficient to meet all claims upon them. Such payment is postponed to the costs of realisation² and to any overriding charges outside the action, but takes priority over all other claims, including the costs of the parties to the action³. On the dissolution of a partnership the court has no power to order that a receiver's costs, expenses and remuneration be paid in priority to sums secured under prior or paramount charges⁴.

1 The assets subject to his receivership whether or not he ever took possession of them: *Mellor v Mellor* [1992] 4 All ER 10, [1992] 1 WLR 517. As to a receiver's costs, charges and expenses see PARA 448 post, and as to his remuneration see PARAS 436-440 ante, 442-443 post. See also generally para 434 ante.

2 Costs of realisation do not include costs of preservation: *Re Oriental Hotels Co*, *Perry v Oriental Hotels Co* (1871) LR 12 Eq 126; *Lathom v Greenwich Ferry Co* (1895) 72 LT 790.

3 *Re Johnson, ex p Royle* (1875) LR 20 Eq 780; *Batten v Wedgwood Coal and Iron Co* (1884) 28 ChD 317; *Strapp v Bull, Sons & Co*, *Shaw v London School Board* [1895] 2 Ch 1, CA; *Ramsay v Simpson* [1899] 1 IR 69 (manager); *Re Glasdir Copper Mines Ltd*, *English Electro-Metallurgical Co Ltd v Glasdir Copper Mines Ltd* [1906] 1 Ch 365, CA; *Davy v Scarth* [1906] 1 Ch 55, where a partner who had been appointed receiver was allowed to retain his remuneration and costs out of assets collected by him, notwithstanding that he was largely indebted to the firm; *Re London United Breweries Ltd*, *Smith v London United Breweries Ltd* [1907] 2 Ch 511; *Re A*

Boynton Ltd, Hoffmann v A Boynton Ltd [1910] 1 Ch 519; *Re Oxley, John Hornby & Sons v Oxley* [1914] 1 Ch 604, CA. As to the question of what should happen where receivers have satisfied creditors but require further sale of assets to pay their own fees see *Rottenberg v Monjack* [1993] BCLC 374, [1992] BCC 688 (a case relating to administrative receivers, as to whom see PARA 302 ante).

4 *Choudhri v Palta* [1992] BCC 787, CA.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/442. Postponement of payment to creditors' right of indemnity.

442. Postponement of payment to creditors' right of indemnity.

It may be that the receiver's remuneration would be postponed to any right of indemnity to which creditors of the receiver, who had no notice of the existence of the receivership, might be entitled by way of subrogation¹. If, however, such creditors have relied upon a charge, even though expressed to be a first charge, and not upon the personal liability of the receiver², or if they are themselves parties to the action and have had the benefit of the receiver's expenditure³, or if they have had notice of the receivership and of the purpose for which the credit is required⁴, their claims will be postponed to the receiver's claim for remuneration.

1 See *Strapp v Bull, Sons & Co, Shaw v London School Board* [1895] 2 Ch 1, CA.

2 *Re A Boynton Ltd, Hoffmann v A Boynton Ltd* [1910] 1 Ch 519.

3 *Strapp v Bull, Sons & Co, Shaw v London School Board* [1895] 2 Ch 1, CA; *Re Glasdir Copper Mines Ltd, English Electro-Metallurgical Co Ltd v Glasdir Copper Mines Ltd* [1906] 1 Ch 365, CA.

4 *Re New Zealand Midland Rly Co, Smith v Lubbock* [1901] 2 Ch 357, CA. See also *Morrison v Morrison* (1854) 2 Sm & G 564; on appeal (1855) 7 De GM & G 214.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/443. Receiver of rents subject to prior incumbrancers.

443. Receiver of rents subject to prior incumbrancers.

A receiver of the rents of realty subject to the rights of prior incumbrancers is entitled to retain his remuneration, costs and expenses out of rents received by him prior to the date at which his possession is displaced by that of a prior incumbrancer¹.

1 *Davy v Price* [1883] WN 226.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/1. THE OFFICE, FUNCTIONS AND LIABILITIES OF A RECEIVER/(6) REMUNERATION/(ii) Calculation and Payment/444. Payment by prosecutor in cases relating to realisable proceeds of crime.

444. Payment by prosecutor in cases relating to realisable proceeds of crime.

Any amount due in respect of the remuneration and expenses of a receiver appointed under the Criminal Justice Act 1988¹ or the Drug Trafficking Act 1994² must, if no sum is available to be applied in payment of it³, be paid by the prosecutor or, in a case where proceedings for a relevant offence⁴ are not instituted, by the person on whose application the receiver was appointed⁵.

1 Ie appointed under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

2 Ie appointed under the Drug Trafficking Act 1994 s 26 (as amended) or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

3 Ie under the Criminal Justice Act 1988 s 81(5) or the Drug Trafficking Act 1994 s 30(6): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

4 Ie an offence under the Criminal Justice Act 1988 Pt VI (as amended) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq) or a drug trafficking offence within the meaning of the Drug Trafficking Act 1994 s 1(3) (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

5 Criminal Justice Act 1988 s 88(2); Drug Trafficking Act 1994 s 36(2). See further SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

UPDATE

436-444 Remuneration

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to the remuneration of a receiver appointed by the court see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

444 Payment by prosecutor in cases relating to realisable proceeds of crime

TEXT AND NOTES--These provisions are now replaced by provisions of the Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

NOTE 5--A receiver is entitled to use the defendant's assets to meet the costs of the receivership, and it is of no consequence whether the defendant is eventually convicted or whether a confiscation order is made: *Hughes v Customs and Excise Comrs; R v Crown Prosecution Service; Anderson v Customs and Excise Comrs* [2002] EWCA Civ 734, [2002] 4 All ER 633.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(1) RECEIVERS' ACCOUNTS/445. In general.

2. ACCOUNTING, DISCHARGE AND SURETIES

(1) RECEIVERS' ACCOUNTS

445. In general.

Following changes in the practice of the court made in 1982¹ there is now no automatic scrutiny of the receiver's accounts by the court. Previously the receiver's accounts had to be vouched by the receiver and 'passed' by the court. Although a variation of this procedure is still available in appropriate cases the court now, as a rule, in the order appointing the receiver, or on the summons to proceed², directs the receiver to submit his accounts to the appropriate interested parties. Only where an objection is taken by a party to some item or items in the accounts will the court become involved. It will then 'examine' rather than 'pass' the accounts³, but only in exceptional circumstances will vouchers and auditing be used.

1 RSC Ord 30 r 5 was substituted by the Rules of the Supreme Court (Amendment No 2) Rules 1982, SI 1982/1111; and is applied in relation to a receiver appointed in a county court by CCR Ord 32 r 3(1)(c).

2 See the Supreme Court Practice 1997 para 30/1/10.

3 See PARA 447 post.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

445-447 Receiver's Accounts

The court may order a receiver to prepare and serve accounts: CPR 69.8(1) (Pt 69 added by SI 2002/2058). A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts: CPR 69.8(2) (as added). Any party may, within 14 days of being served with the accounts, serve notice on the receiver (1) specifying any item in the accounts

to which he objects; (2) giving the reason for such objection; and (3) requiring the receiver, within 14 days of receipt of the notice, either (a) to notify all the parties who were served with the accounts that he accepts the objection; or (b) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item: CPR 69.8(3) (as added). When the receiver applies for the examination of the accounts he must at the same time file (i) the accounts; and (ii) a copy of the notice served on him under CPR 69.8: CPR 69.8(4) (as added). If the receiver fails to comply with head (3) above, any party may apply to the court for an examination of the accounts in relation to the contested item: CPR 69.8(5) (as added). At the conclusion of its examination of the accounts the court will certify the result: CPR 69.8(6) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added). For supplementary provision relating to the receiver's accounts see *Practice Direction-- Court's Power to Appoint a Receiver* PD 69 paras 10.1-10.3.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(1) RECEIVERS' ACCOUNTS/446. Submission of accounts, notice of inspection and of objections.

446. Submission of accounts, notice of inspection and of objections.

The receiver must submit accounts to such parties at such intervals or at such dates as the court may direct¹. Any such party may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to such accounts². A party may give notice of objection to one or more items in any account, and further require the receiver to lodge the account in court within not less than 14 days for examination of the item or items to which objection is taken³. A copy of the notice of objection must be lodged in the appropriate court office⁴.

1 RSC Ord 30 r 5(1); and see Chancery Division Practice Direction No 3B set out in the Supreme Court Practice 1997 para 804. RSC Ord 30 r 5 is applied in relation to a receiver appointed by a county court by CCR Ord 32 r 3(1)(c).

2 See RSC Ord 30 r 5(2).

3 See RSC Ord 30 r 5(3).

4 See RSC Ord 30 r 5(3). In the Chancery Division the papers are lodged in the orders and accounts section, Room TM 5.07, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL; in the Queen's Bench Division they are lodged in the Masters' Secretaries Department; and in the Family Division, or in a case proceeding in a district registry, they are lodged in the appropriate district judge's chambers office.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

445-447 Receiver's Accounts

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permitting him to inspect any document in the possession of the receiver relevant to those accounts: CPR 69.8(2) (as added). Any party may, within 14 days of being served with the accounts, serve notice on the receiver (1) specifying any item in the accounts to which he objects; (2) giving the reason for such objection; and (3) requiring the receiver, within 14 days of receipt of the notice, either (a) to notify all the parties who were served with the accounts that he accepts the objection; or (b) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item: CPR 69.8(3) (as added). When the receiver applies for the examination of the accounts he must at the same time file (i) the accounts; and (ii) a copy of the notice served on him under CPR 69.8: CPR 69.8(4) (as added). If the receiver fails to comply with head (3) above, any party may apply to the court for an examination of the accounts in relation to the contested item: CPR 69.8(5) (as added). At the conclusion of its examination of the accounts the court will certify the result: CPR 69.8(6) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added). For supplementary provision relating to the receiver's accounts see *Practice Direction-- Court's Power to Appoint a Receiver* PD 69 paras 10.1-10.3.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(1) RECEIVERS' ACCOUNTS/447. Examining the receiver's accounts.

447. Examining the receiver's accounts.

Once the account and other relevant documents have been lodged, the plaintiff or other party having the conduct of the proceedings must obtain an appointment for the examination of the relevant items, and serve notice of the appointment on all parties entitled to attend. Those entitled to attend include all parties to the action not in default of acknowledgment of service. It is usual (and indeed advisable) for the receiver to attend, even though he is represented by a solicitor, so as to be able to answer personally any questions which may arise. At the conclusion of the court's examination the result of the examination must be certified by a master, the Admiralty registrar, or a district judge of the Family Division or of any registry in which the case is proceeding as the case may be¹. An order may then be made as to the incidence of any costs or expenses incurred².

Sometimes a receiver will need extra time in which to bring in his accounts. Where that is the case he should mention the matter to the relevant officer of the court who will in a proper case ensure that the receiver has the time he needs³.

¹ RSC Ord 30 r 5(4). RSC Ord 30 r 5 is applied in relation to a receiver appointed by a county court by CCR Ord 32 r 3(1)(c).

² RSC Ord 30 r 5(4).

³ If the matter is straightforward or uncontentious a written request to the receivership officer could be made under RSC Ord 30 r 8. Directions may also be given to a receiver appointed by a county court: see CCR Ord 32 r 3(1)(f), applying RSC Ord 30 r 8. The receivership office for the High Court is the orders and accounts section, Room TM 5.07, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

445-447 Receiver's Accounts

The court may order a receiver to prepare and serve accounts: CPR 69.8(1) (Pt 69 added by SI 2002/2058). A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts: CPR 69.8(2) (as added). Any party may, within 14 days of being served with the accounts, serve notice on the receiver (1) specifying any item in the accounts to which he objects; (2) giving the reason for such objection; and (3) requiring the receiver, within 14 days of receipt of the notice, either (a) to notify all the parties who were served with the accounts that he accepts the objection; or (b) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item: CPR 69.8(3) (as added). When the receiver applies for the examination of the accounts he must at the same time file (i) the accounts; and (ii) a copy of the notice served on him under CPR 69.8: CPR 69.8(4) (as added). If the receiver fails to comply with head (3) above, any party may apply to the court for an examination of the accounts in relation to the contested item: CPR 69.8(5) (as added). At the conclusion of its examination of the accounts the court will certify the result: CPR 69.8(6) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added). For supplementary provision relating to the receiver's accounts see *Practice Direction-- Court's Power to Appoint a Receiver* PD 69 paras 10.1-10.3.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/448. General rule as to allowances and the right to indemnity.

(2) ALLOWANCES

448. General rule as to allowances and the right to indemnity.

A receiver appointed by the court is entitled to be allowed all costs, charges and expenses and to be indemnified against all liabilities properly incurred in the protection and preservation of the property committed to his charge, or otherwise in the course of his duties, even though they result in loss¹, and the right to indemnity is not lost by the termination of his office². However, if he suffers any costs to accrue which ought to have been prevented, he is liable to pay them out of his own pocket³.

1 *Morison v Morison* (1855) 7 De GM & G 214; *Re Gomersall, ex p Gordon* (1875) LR 20 Eq 291; *Re Bushell, ex p Izard* (1883) 23 ChD 75 at 80, CA; *Re Brooke, Brooke v Brooke* [1894] 2 Ch 600; *Re Graham, Graham v Noakes* [1895] 1 Ch 66 (fire insurance premiums). As to repairs see *Blunt v Clitherow* (1802) 6 Ves 799; *A-G v Vigor* (1805) 11 Ves 563; *Re Graham, Graham v Noakes* supra.

2 *Levy v Davis* [1900] WN 174.

3 *Cook v Sharman* (1844) 8 I Eq R 515; *Woodroffe v Greene* (1852) 2 I Ch R 330 (unnecessary employment of a solicitor).

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/449. Expenses of carrying on business.

449. Expenses of carrying on business.

A receiver who is also appointed manager¹ of a business is allowed all the necessary expenses of carrying on the business with a view to advantageous sale, such as wages and salaries to workmen and employees²; but the right to repayment is limited to the assets controlled by the court and, if these prove insufficient, the receiver has no claim against the parties personally in the absence of express contract³. In the absence of special circumstances, a receiver will be disallowed expenditure incurred or remuneration for work done after his appointment has expired⁴. In the case of large business concerns, the order of appointment often authorises the engagement, at a salary, of sub-managers and agents for various purposes⁵.

1 As to managers generally see PARA 482 et seq post.

2 *Re Gomersall, ex p Gordon* (1875) LR 20 Eq 291.

3 *Boehm v Goodall* [1911] 1 Ch 155; applied in *Evans v Clayhope Properties Ltd* [1988] 1 All ER 444, [1988] 1 WLR 358, CA. For the manner in which losses are borne as between tenant for life and remainderman see SETTLEMENTS. Subject to certain exceptions, however, no settlement created on or after 1 January 1997 is a strict settlement and no settlement is deemed to be made under the Settled Land Act 1925 thereafter: see the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 65.

4 See *Re Wood Green and Hornsey Steam Laundry Ltd, Trenchard v Wood Green and Hornsey Steam Laundry Ltd* [1918] 1 Ch 423.

5 1 Seton's Judgments and Orders (7th Edn) 731-732.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/450. Effect on costs of default or authorisation of receiver.

450. Effect on costs of default or authorisation of receiver.

A receiver may be ordered to pay the costs of any application to the court rendered necessary by his own default¹; but it would appear that, if a receiver who has been guilty of default is able

to show that he acted at the instance of parties interested in the property, he may be allowed to charge those parties in account with any costs that have been thrown on him personally in consequence of such default².

Plaintiffs who are parties to orders authorising a receiver to do various acts as receiver are estopped from objecting afterwards to the allowance of his costs in respect of them³.

1 *Walsh v Walsh* (1839) 1 I Eq R 209; *Saunderson v Stoney* (1839) 2 I Eq R 153; *Bertie v Lord Abingdon* (1845) 8 Beav 53; *Re St George's Estate* (1887) 19 LR Ir 566; *Re Suffield and Watts, ex p Brown* (1888) 36 WR 303 (revsd on another point 20 QBD 693, CA).

2 *Bertie v Lord Abingdon* (1845) 8 Beav 53 at 60.

3 *Taylor v Taylor* (1881) 6 PD 29.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/451. Costs of applications in respect of disbursements.

451. Costs of applications in respect of disbursements.

Application to the court should not be made in respect of disbursements which will certainly be allowed to the receiver, and the receiver may be ordered to pay the costs of any unnecessary application of the kind¹. However, the sanction of the court should be obtained beforehand for any expenditure or liability the propriety of which may be in doubt, for, unless this is done, the receiver runs the risk of having the expenses disallowed and an indemnity against such liabilities refused².

If necessary an inquiry will be directed whether unauthorised expenditure has been for the benefit of the property or parties interested³, and, as a rule, expenditure which in the result proves beneficial is allowed⁴.

1 *Newtown v Obre* (1837) Sau & Sc 137; *Fitzgerald v Fitzgerald* (1843) 5 I Eq R 525.

2 *Malcolm v O'Callaghan* (1837) 3 My & Cr 52, CA in Ch; *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd* [1906] 1 Ch 497 (subsequent proceedings *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd (No 2)* [1907] 1 Ch 528).

3 *Blunt v Clitherow* (1802) 6 Ves 799; *A-G v Vigor* (1805) 11 Ves 563; *Tempest v Ord* (1816) 2 Mer 55. Cf *Swaby v Dickon* (1833) 5 Sim 629.

4 *Malcolm v O'Callaghan* (1837) 3 My & Cr 52, CA in Ch; *Bristowe v Needham* (1847) 2 Ph 190.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/452. Costs of accounts and security.

452. Costs of accounts and security.

A receiver is entitled to the costs of and incidental to the submission of his accounts, unless he is in default and has accounted only under stress of an order for attachment¹; and, if no objection is taken at the time to want of punctuality in accounting, such costs are not afterwards disallowed unless in very special circumstances².

Formerly, the expenses of finding security³ and premiums payable to a guarantee society were disallowed unless the receiver was acting without salary⁴ but such expenses are now allowed in almost all cases⁵. If the receiver is required to give, and fails to complete, his security, he must, as a rule, bear personally the costs of the proceedings necessary to set aside his appointment and obtain the appointment of a substitute⁶.

1 *Trapaud v Cormick* (1825) 1 Hog 245. See also PARAS 461-462, 492 post.

2 *Ward v Swift* (1848) 8 Hare 139.

3 As to the security which may be required to be given by the receiver see PARA 363 et seq ante.

4 *Re Golding* (1888) 21 LR Ir 194; *Harris v Sleep* [1897] 2 Ch 80, CA.

5 See (1951) 101 L Jo 241.

6 *Hunter v Pring* (1845) 8 I Eq R 102, where in exceptional circumstances the receiver was excused on the ground of poverty and ignorance; *Lane v Townsend* (1852) 2 I Ch R 120, where the receiver was also excused in special circumstances.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/453. Costs of application for discharge or removal.

453. Costs of application for discharge or removal.

A receiver who applies for his own discharge is not allowed the costs of the application¹ unless there is very good reason for it²; nor is he allowed the costs incidental to his own removal and

the appointment of a new receiver, unless by consent or after unusually long and faithful service³. Where the application for discharge is made by the parties to the action in the usual way, the receiver, being a mere officer of the court, should not appear, although served with notice of the application, and if he does appear his costs will be disallowed⁴. Where the application is rendered necessary by the wilful default of the receiver himself, he may be ordered to pay the costs of the application, of his own discharge and of the appointment of a successor⁵.

1 *Cox v M'Namara* (1847) 11 I Eq R 356; *Stilwell v Mellersh* (1851) 20 LJ Ch 356 at 362.

2 *Richardson v Ward* (1822) 6 Madd 266, where retirement was rendered necessary by failing eyesight and memory.

3 *Cox v M'Namara* (1847) 11 I Eq R 356.

4 *Lane v Townsend* (1852) 2 I Ch R 120; *Herman v Dunbar* (1857) 23 Beav 312.

5 *Re St George's Estate* (1887) 19 LR Ir 566.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/454. Costs of proceedings by or without leave.

454. Costs of proceedings by or without leave.

A receiver is allowed his costs of any action brought by direction of the court, even though it is dismissed with costs; and, if the assets prove insufficient to pay the costs of the successful defendant as well as those of the receiver, priority will be given to the receiver's claim¹. Although a receiver is not entitled to his costs, charges and expenses until he submits his accounts, the costs of legal proceedings taken by order of the court may be ordered to be paid to his solicitor out of funds in court, even though the receiver is in default².

The costs of initiating or defending legal proceedings without the leave of the court are not, as a rule, allowed³; but, if the defence of an action is undertaken in the interests of and for the protection of the estate and proves successful, the receiver is entitled to be indemnified against his costs, notwithstanding that he acted without leave⁴. If proceedings initiated by a receiver have to be abandoned owing to an error in the form of procedure the costs may be disallowed⁵, as may the costs of an application by a receiver for leave to commence proceedings on behalf of the plaintiff against one of the defendants to an action, such proceedings being outside the scope of his duties as receiver⁶.

1 *Ramsay v Simpson* [1899] 1 IR 194, Ir CA.

2 *M'Bride v Clarke* (1839) 1 I Eq R 203.

3 *Swaby v Dickon* (1833) 5 Sim 629; *Conyers v Crosbie* (1844) 6 I Eq R 657; *Re Dunn, Brinklow v Singleton* [1904] 1 Ch 648.

4 *Courand v Hanmer* (1846) 9 Beav 3; *Bristowe v Needham* (1847) 2 Ph 190; *Re Dunn, Brinklow v Singleton* [1904] 1 Ch 648.

5 *Re Montgomery* (1828) 1 Mol 419 (mentally disordered person).

6 *Comyn v Smith* (1823) 1 Hog 81; *Murtin v Walker* (1837) Sau & Sc 139.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(2) ALLOWANCES/455. Costs of applications to the court generally.

455. Costs of applications to the court generally.

Application to the court should be made by the parties to the action and not by the receiver personally, and the costs of any application by the receiver in his own name may be disallowed unless he shows that the parties have refused or neglected to act¹, especially if the application is made in the interests of one party against another in a disputed question of right².

1 *Ireland v Eade* (1844) 7 Beav 55; *Re Sacker, ex p Sacker* (1888) 22 QBD 179 at 185, CA, per Fry LJ. See also *Parker v Dunn* (1845) 8 Beav 497; *Stilwell v Mellersh* (1851) 20 LJ Ch 356 at 361, where the costs of a petition by the receiver for his discharge, coming on with the plaintiff's summons for further directions in the action, were disallowed; and PARA 422 ante.

2 *Comyn v Smith* (1823) 1 Hog 81.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(3) PAYMENT OF BALANCES INTO COURT/456. Accounts in foreclosure actions.

(3) PAYMENT OF BALANCES INTO COURT

456. Accounts in foreclosure actions.

In a foreclosure action the taking of the receiver's accounts may be postponed until after foreclosure absolute if the destination of balances in his hands has been already determined¹, but not otherwise, in the absence of special circumstances². The order for foreclosure nisi should provide that the plaintiff be charged with sums paid into court by the receiver and any sum in the receiver's hands at the date of certificate, and such a sum as the plaintiff may submit to be charged with after certificate and before foreclosure absolute³. If this form is used a further account is unnecessary, and, if more is received than the plaintiff submits to be charged with, a further account is verified by affidavit. If the amount is less than that with which the plaintiff submits to be charged the foreclosure is not opened, the receiver's account being taken at once⁴.

1 *Coleman v Llewellyn* (1886) 34 ChD 143, CA.

2 *Jenner-Fust v Needham* (1886) 32 ChD 582, CA; *Cheston v Wells* [1893] 2 Ch 151. See further MORTGAGE vol 77 (2010) PARA 613.

3 *Simmons v Blandy* [1897] 1 Ch 19.

4 See Kerr on Receivers (17th Edn) pp 246-247; and *Ellenor v Ugle* [1895] WN 161.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(3) PAYMENT OF BALANCES INTO COURT/457. Directions as to payment into court or lodgment.

457. Directions as to payment into court or lodgment.

The court may fix the amounts and frequency of payments into court to be made by the receiver¹. Such directions may be included in the order appointing the receiver, but are now frequently given during the examining of a receiver's account. Alternatively, the court now often permits the receiver to retain substantial sums, but ensures that such sums are held on deposit account or are otherwise earning interest. Failure to effect lodgment within the time fixed may result in loss of remuneration or a charge of interest².

In the case of a receiver appointed under Part VI of the Criminal Justice Act 1988³ or the Drug Trafficking Act 1994⁴, when he has fully paid the amount payable under the confiscation order and any sums remain in his hands, he must apply by summons for directions as to the distribution of such sums⁵.

1 RSC Ord 30 r 6 (applied in relation to a receiver appointed by a county court by CCR Ord 32 r 3(1)(d)).

2 RSC Ord 30 r 7(2) (applied in relation to a receiver appointed by a county court by CCR Ord 32 r 3(1)(e)).

3 In the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

4 le under the Drug Trafficking Act 1994 s 26 (as amended) or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

5 See RSC Ord 115 rr 8(3), 23. The summons must be served with any supporting evidence not less than seven days before the date fixed for its hearing on the defendant and on any other person who held property realised by the receiver: Ord 115 rr 8(4), 23.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

457 Directions as to payment into court or lodgment

TEXT AND NOTES 3, 4--1988 Act Pt VI and 1994 Act ss 26, 29 replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(3) PAYMENT OF BALANCES INTO COURT/458. Duty to initiate payment in.

458. Duty to initiate payment in.

Where the order appointing the receiver fails to provide for payment into court he should not wait until the examination of an account if he has substantial sums in hand which ought to be lodged in court or invested. In such circumstances he should apply to the receivership officer¹ for directions as soon as he has a sufficient balance in hand to warrant the cost of doing so. He is not entitled to make use of balances in his hands for his own use² or to retain them in an unproductive state until an order is obtained for investment³, and he may be charged with any loss of interest occasioned by delay in lodgment or investment⁴.

1 le to the orders and accounts section, Room TM 5.07, Thomas More Building, Royal Courts of Justice, Strand, London WC2A 2LL.

2 *Shaw v Rhodes* (1826) 2 Russ 539.

3 *Potts v Leighton* (1808) 15 Ves 273 at 274 (where, however, the receiver's real default lay in not passing his account when directed to do so); *Harman v Forster* (1825) 1 Hog 318.

4 *Potts v Leighton* (1808) 15 Ves 273; *Shaw v Rhodes* (1826) 2 Russ 539.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(3) PAYMENT OF BALANCES INTO COURT/459. Lodgment schedule.

459. Lodgment schedule.

When any directions as to lodgment have been given, or where he wishes to lodge funds without any prior order, the receiver should prepare a lodgement schedule. The choice of investment is a matter for all interested parties. The lodgment schedule is signed by the master and forwarded to the Court Funds Office, where the Accountant General's directions for lodgment will be issued¹. These directions, which are based upon the lodgment schedule, are the authority for the lodgment of the money into the Court Funds Office. Where the payment is made by banker's draft or cheque, it is made payable to the Accountant General².

¹ See the Court Funds Rules 1987, SI 1987/821, rr 14(1), 15(1).

² See *ibid* r 16(1), (3).

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

459 Lodgment schedule

NOTE 1--SI 1987/821 r 14(1) amended: SI 1999/1021, SI 2003/375, SI 2007/729, SI 2007/2617. SI 1987/821 r 15(1) amended: SI 1999/1021, SI 2003/375, SI 2007/729.

NOTE 2--SI 1987/821 r 16(1), (3) amended: SI 1999/1021, SI 2003/375. SI 1987/821 r 16(3) amended: SI 1999/1021.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(3) PAYMENT OF BALANCES INTO COURT/460. Order for payment after dismissal of action.

460. Order for payment after dismissal of action.

An order may be made on a receiver to submit his accounts and pay over the balances notwithstanding that the action in which he was appointed has been dismissed¹; and even after a receiver has been discharged his accounts may be investigated and surcharged².

¹ *Pitt v Bonner* (1833) 5 Sim 577; *Hutton v Beeton and M'Murray, Beeton v M'Murray and Hutton* (1863) 9 Jur NS 1339.

² *Harrison v Boydell* (1833) 6 Sim 211; *Ingham v Sutherland* (1890) 63 LT 614; *Re Edwards* (1892) 31 LR Ir 242.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(4) DEFAULT IN ACCOUNTING/461. Penalties for default.

(4) DEFAULT IN ACCOUNTING

461. Penalties for default.

If a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and thereupon such directions as are proper may be given in chambers or by adjournment into court, including the discharge of the receiver and the appointment of another, and payment of costs¹. Without prejudice to this, if a receiver fails to attend for the examination of his account or fails to submit any account or fails to pay into court on the date fixed by the court any sum so required to be paid, his remuneration may be disallowed and he may also be charged with interest at the rate currently payable in respect of judgment debts in the High Court on that sum while in his possession as receiver², although the laches of the parties may be a ground for not charging the receiver with interest³. Furthermore, a receiver who fails to pay his balances into court after being ordered by the court to do so is liable to committal for contempt⁴ as a person acting in a fiduciary capacity within the meaning of the Debtors Act 1869⁵, to sequestration, and also to pay the costs of any application made to the court for committal or sequestration⁶. On failure to

comply with a summary order, the security may be ordered to be enforced⁷. A receiver who fails to carry out any order for payment to a particular person of a sum of money for costs or otherwise is liable to committal⁸.

These penalties may be enforced even after the receiver has been discharged, if he fails to pay the final balance found due from him⁹; but accounts once examined and certified will not be reopened for the purpose of charging a receiver with interest or disallowing his remuneration unless the application is made promptly¹⁰, nor will a receiver be deprived of his remuneration if his delay in accounting has been solely for the convenience and at the request of the parties¹¹.

1 RSC Ord 30 r 7(1) (applied in relation to a receiver appointed by a county court by CCR Ord 32 r 3(1)(e)). In a county court, where the order for appointment of the receiver was made by the judge, this power to discharge for default is only exercisable by the judge: see CCR Ord 32 r 3(4). See also *Bertie v Lord Abingdon* (1845) 8 Beav 53 at 56; *Re St George's Estate* (1887) 19 LR Ir 566.

2 RSC Ord 30 r 7(2) (applied in relation to a county court: see note 1 supra). See also *Foster v Foster* (1789) 2 Bro CC 616; *Fletcher v Dodd* (1789) 1 Ves 85; -- *v Jolland* (1802) 8 Ves 72; *White v Lady Lincoln, Duke of Newcastle v Kinderley* (1803) 8 Ves 363 at 371 per Lord Eldon LC; *Potts v Leighton* (1808) 15 Ves 273; *Dawson v Raynes* (1826) 2 Russ 466; *Re Ward, Simmons v Rose, Weeks v Ward* (1862) 31 Beav 1; *Bristowe v Needham* (1863) 11 WR 926.

3 *Dawson v Raynes* (1826) 2 Russ 466; *Gurden v Badcock* (1842) 6 Beav 157.

4 *Re Bell's Estate, Foster v Bell* (1870) LR 9 Eq 172.

5 See under the Debtors Act 1869 s 4(3): *Re Gent, Gent-Davis v Harris* (1888) 40 ChD 190. See also CONTEMPT OF COURT.

6 *Macarty v Gibson* (1728) Mos 40; *Davies v Cracraft* (1807) 14 Ves 143; *Maunsell v Egan* (1846) 3 Jo & Lat 251; *Sprunt v Pugh* (1878) 7 ChD 567. As to committal see CONTEMPT OF COURT; and as to sequestration see CIVIL PROCEDURE vol 12 (2009) PARA 1380 et seq.

7 *Thurlow v Thurlow* (1840) 4 Jur 982.

8 *Betagh v Concanon, Hughes v Concanon* (1836) L & G temp Plunk 355. See also CONTEMPT OF COURT. Where a receiver had been ordered to pay his balance direct to the persons entitled and had made default in doing so, it was held that a summary order and not a writ of fieri facias was the proper process to compel payment: *Whitehead v Lynes* (1864) 34 Beav 161.

9 *Harrison v Boydell* (1833) 6 Sim 211.

10 *Ward v Swift* (1848) 8 Hare 139.

11 *Flood v Lord Aldborough* (1845) 8 I Eq R 103; *Purcell v Woodley* (1847) 10 I Eq R 422; but distinguish *Dease v Reilly* (1843) 2 Con & Law 441, where some of the parties were minors.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(4) DEFAULT IN ACCOUNTING/462. Position of receiver's executors.

462. Position of receiver's executors.

An order may not be made on the executors of a deceased receiver to submit his accounts and to pay the balance found due out of his assets¹, unless by consent² or on their own application³. They are not parties to the suit, and, if they are unwilling to account, they can only be compelled to do so by independent proceedings⁴.

If a receiver, although he fails to account to the court, is shown to have applied all money coming to his hands in such manner as the court itself would have directed, his executors, after the lapse of many years, will not be called upon to account⁵.

1 *Jenkins v Briant* (1834) 7 Sim 171, explained in *Ludgater v Channell* (1851) 3 Mac & G 175 at 180.

2 *Littleboy v Spooner* (1826) 1 Seton's Judgments and Orders (6th Edn) 815; *Re Ward, Simmons v Rose, Weeks v Ward* (1862) 31 Beav 1.

3 See *Gurden v Badcock* (1842) 6 Beav 157; *Magan v Fallon* (1843) 5 I Eq R 490; and the order in *Holmes v Holmes* (1843) set out in 1 Seton's Judgments and Orders (6th Edn) 815. Cf the position of sureties: see PARA 474 et seq post.

4 See *Foster v Foster* (1789) 2 Bro CC 616; *Brydges v Brydges and Wood* [1909] P 187, CA. An admission of assets by the executors of a receiver has been treated as an admission of assets to meet whatever should be found due from the testator in his character of receiver, so as to make them liable for interest as well as principal; but this was considered a very hard case: *Tew v Lord Winterton* (1792) cited in 4 Ves at 605. See also *Magan v Fallon* (1843) 5 I Eq R 490. As to the effect of admission of assets see EXECUTORS AND ADMINISTRATORS. As to the position of sureties cf para 477 post.

5 *Armitage v Forbes* (1831) Hayes 222.

UPDATE

445-481 Accounting, Discharge and Sureties

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457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/463. Necessity for order of discharge.

(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE

463. Necessity for order of discharge.

Unless his appointment was for a limited time only¹, a receiver appointed by the court may only be discharged by order, even though circumstances have rendered the appointment nugatory. For example, the subsequent bankruptcy of the defendant does not of itself operate as a discharge²; nor does the liquidation of a company over the assets of which a receiver has been appointed in a debenture holders' action³; nor does the fact that the estate for which the property is held, whether for life or years, has determined⁴, or that the receiver has been unable to complete his security⁵, or that the property proves to belong to a stranger⁶, or that the creditors on whose behalf the receiver has been appointed have been fully paid⁷, or that the action has abated by reason of the death of a party⁸, or has been stayed or dismissed⁹. Although it has been said that a receiver appointed in an action must stand or fall with the action¹⁰, there must be an order discharging the receiver¹¹.

1 As to the appointment of a receiver by the court for a limited time only see PARA 311 ante.

2 *Skip v Harwood* (1747) 3 Atk 564; *Taylor v Eckersley* (1877) 5 ChD 740; *Deacon v Arden* (1884) 50 LT 584; *Re Parker and Parker, ex p Official Receiver* (1884) 1 Morr 39.

3 *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA. However, such liquidation does determine the agency of a receiver appointed out of court: *Thomas v Todd* [1926] 2 KB 511.

4 *Britton v M'Donnell* (1843) 5 I Eq R 275; *Kenny v Clarke* (1843) 5 I Eq R 280; *Johnston v Henderson* (1844) 8 I Eq R 521; *Re Stack, Stack v Royse* (1862) 13 I Ch R 213.

5 *Hunter v Pring* (1845) 8 I Eq R 102; *Lane v Townsend* (1852) 2 I Ch R 120.

6 *Lavender v Lavender* (1875) 9 I Eq R 593. See also *Fowler v Haynes* (1863) 2 New Rep 156.

7 *Tewart v Lawson* (1874) LR 18 Eq 490. See also *Re Powis, ex p Jay* (1873) 9 Ch App 133; *Re Hawes, ex p Jeffery* (1874) 9 Ch App 144; *Re Morrisy, ex p Taylor* (1874) LR 18 Eq 256; *Re Potter, ex p Day* (1883) 48 LT 912 (cases relating to receivers in bankruptcy).

8 *Woods v Creaghe* (1824) 1 Hog 174; *Newman v Mills* (1825) 1 Hog 291; *Brennan v Kenny* (1852) 2 I Ch R 579; *Lavender v Lavender* (1875) 9 I Eq R 593.

9 *Pitt v Bonner* (1833) 5 Sim 577.

10 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 168.

11 *Davis v Duke of Marlborough* (1819) 2 Swan 108; *White v Lord Westmeath* (1828) Beat 174. As to the discharge of a receiver subsequently appointed administrator pending suit see PARA 314 ante.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/464. Circumstances in which an order for discharge may be made or refused.

464. Circumstances in which an order for discharge may be made or refused.

In general, an order for the discharge of a receiver may be obtained whenever the appointment has become either nugatory or unnecessary¹. In the case of annuities, the receiver may be discharged if all arrears have been paid and the security is no longer in jeopardy, notwithstanding the opposition of the annuitant² or of prior incumbrancers³; but a receiver appointed on behalf of creditors will not be discharged so long as the claim of any one creditor remains unsatisfied or unadjudicated⁴; nor will a receiver appointed at the instance of beneficiaries be discharged so long as any question of the title to the property remains outstanding⁵. An order for discharge will not be made if it would prejudice creditors who are parties to the cause⁶, but those creditors may be put on terms to bring their own action for a receiver immediately⁷.

The statutory power conferred on a bankruptcy court of staying any action against the property or person of the debtor⁸ implies a power to discharge a receiver appointed in the action⁹.

1 *Palmer v Barrett* (1837) 1 Moo PCC 415 at 431, 433; *Bainbrigge v Blair* (1841) 3 Beav 421; *Davy v Gronow* (1845) 14 LJ Ch 134; *Barton v Rock* (1856) 22 Beav 376; *Hoskins v Campbell, Gibbon v Campbell* [1869] WN 59. See also the cases cited in PARA 463 notes 2-11 ante; *Trade Auxiliary Co v Vickers* (1873) LR 16 Eq 298 at 303; *Re Kastner & Co Ltd, Auto-Piano Co v Kastner & Co Ltd* [1917] 1 Ch 390 (appointment of controller of enemy business).

2 *Sankey v O'Maley* (1825) 2 Mol 491; *Braham v Strathmore* (1844) 8 Jur 567.

3 *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 167.

4 *Largan v Bowen* (1803) 1 Sch & Lef 296.

5 *Reeves v Neville* (1862) 10 WR 335.

6 *Murrough v French* (1827) 2 Mol 497; *Paynter v Carew* (1854) 18 Jur 417.

7 *Murrough v French* (1827) 2 Mol 497.

8 *See the Insolvency Act 1986 s 285. See further BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 730.*

9 *Re Parker and Parker, ex p Official Receiver* (1884) 1 Morr 39.

UPDATE

445-481 Accounting, Discharge and Sureties

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457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

464 Circumstances in which an order for discharge may be made or refused

TEXT AND NOTES--A receiver or any party may apply for the receiver to be discharged on completion of his duties: CPR 69.10(1) (added by SI 2002/2058; and amended by SI

2004/1306). 'Receiver' includes a manager: CPR 69.1(2) (added by SI 2002/2058). The application notice must be served on the persons who were required under CPR 69.4 to be served with the order appointing the receiver: CPR 69.10(2) (added by SI 2004/1306).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/465. Vacation of office where company administration order made.

465. Vacation of office where company administration order made.

On the making of an administration order in relation to a company¹, any administrative receiver² must vacate office³; and where such an order has been made, any receiver of part of the company's property must vacate office on being required to do so by the administrator⁴.

1 As to administration orders see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 146 et seq.

2 As to administrative receivers see PARA 302 ante.

3 See the Insolvency Act 1986 s 11(1)(b); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 157.

4 See *ibid* s 11(2); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 157.

UPDATE

445-481 Accounting, Discharge and Sureties

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457-481 Accounting, Discharge and Sureties

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/466. Discharge in company's liquidation.

466. Discharge in company's liquidation.

When a company goes into liquidation a receiver who has been appointed by the court in a debenture holders' action¹ may be discharged and the liquidator appointed in his place². However, it is often inconvenient that the same person should hold both offices³. The liquidator will not be appointed if the assets are clearly insufficient to meet the claims of the debenture holders⁴, or if there is no substantial amount of uncalled capital and similar assets outstanding⁵, or if the nature of the assets is such that they are more readily realisable by an accountant or

businessman than by an officer of the court⁶. If there is a dispute between the receiver and the liquidator as to the validity of the debentures and the extent of the property comprised in the security, an independent person may be appointed receiver pending the determination of the question at issue⁷. The fact that the liquidator in a voluntary winding up is also receiver may be sufficient ground for removing him from the office of liquidator at the instance of unpaid creditors⁸.

1 As to the information which was to be given where such a receiver was appointed before 29 December 1986 see the Companies Act 1985 s 495 (repealed). Where such a receiver is appointed on or after that date, he is an administrative receiver and the provisions of the Insolvency Act 1986 s 46 apply: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 395. As to administrative receivers see PARA 302 ante; and as to an administrative receiver's vacation of office see PARA 465 ante.

2 *Perry v Oriental Hotels Co* (1870) 5 Ch App 420; *Re Compagnie Générale de Bellegarde, Campbell v Compagnie Générale de Bellegarde* (1876) 2 ChD 181; *Tottenham v Swansea Zinc Ore Co Ltd* (1884) 53 LJ Ch 776; *Bartlett v Northumberland Avenue Hotel Co Ltd* (1885) 53 LT 611, CA; *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA; *British Linen Co v South American and Mexican Co* [1894] 1 Ch 108, CA. See also COMPANIES vol 15 (2009) PARA 1365. As to the position of receivers appointed out of court see *Re Henry Pound, Son and Hutchins* (1889) 42 ChD 402 at 419, CA; *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* supra; and PARA 306 ante.

3 *Re Karamelli and Barnett Ltd* [1917] 1 Ch 203.

4 *Strong v Carlyle Press* [1893] 1 Ch 268, CA.

5 *Re Joshua Stubbs Ltd, Barney v Joshua Stubbs Ltd* [1891] 1 Ch 475, CA.

6 *British Linen Co v South American and Mexican Co* [1894] 1 Ch 108, CA, where the nominee of the debenture holders was appointed receiver of certain special securities and the liquidator was appointed receiver of all other assets.

7 *Giles v Nuttall, Re House Improvement Association Ltd* (1885) 78 LT Jo 130, 352, CA.

8 *Re Karamelli and Barnett Ltd* [1917] 1 Ch 203.

UPDATE

445-481 Accounting, Discharge and Sureties

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457-481 Accounting, Discharge and Sureties

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/467. Appointment improperly obtained.

467. Appointment improperly obtained.

The order appointing a receiver is discharged whenever it is shown to have been improperly obtained¹, for example where the affidavit of fitness contains misleading statements². Thus, if a

receiver has been appointed of property not capable of assignment at law³, or for the purpose of preventing the exercise of a legal right, such as an executor's right of retainer⁴, or for the purpose of enabling a partner to act in excess of his powers under the partnership articles⁵, or if property of a stranger has been erroneously included in the order⁶, or if a person has been appointed who by reason of his position should not have been appointed⁷, or who has subsequently come under some disqualification⁸, then, in all such cases, either the receiver or the order appointing the receiver will be discharged, as the justice of the case may require.

1 *Buxton v Monkhouse* (1810) Coop G 41; *Piperno v Harmston* (1886) 3 TLR 219, CA.

2 *Re Church Press Ltd, Victoria House Printing Co Ltd v Church Press Ltd* (1917) 116 LT 247. See also PARA 328 ante.

3 *Lucas v Harris* (1886) 18 QBD 127, CA; *Brenan v Morrissey* (1890) 26 LR Ir 618; *Macdonald v O'Toole* [1908] 2 IR 386. See also PARA 355 et seq ante.

4 *Re Wells, Molony v Brooke* (1890) 45 ChD 569. See also PARA 345 ante.

5 *Niemann v Niemann* (1889) 43 ChD 198, CA. See also PARA 345 ante.

6 *Fowler v Haynes* (1863) 2 New Rep 156.

7 As to interested parties see PARA 351 ante.

8 As to eligibility for appointment see PARA 350 ante.

UPDATE

445-481 Accounting, Discharge and Sureties

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/468. Default, misconduct and incompetence.

468. Default, misconduct and incompetence.

Any default by a receiver in submitting his accounts, paying his balances or otherwise may be a ground for his discharge¹, and a receiver who becomes bankrupt², or absconds³, will be discharged; but it would appear that the mere fact that the receiver has left the neighbourhood of the property and gone to reside at a distance does not justify discharge unless all parties consent⁴.

Misconduct may also justify discharge. Thus, a receiver appointed in a partnership action who allows the rent of the partnership premises to fall into arrear so that the landlord distrains, or tries to move the business for the benefit of the plaintiff, who is his personal friend, may be

discharged⁵; but the mere fact that the receiver has allowed the owner to remain in possession of part of the property is not sufficient, for the parties might have applied to the court for delivery of possession to the receiver⁶.

The incompetence of a receiver is a ground for his discharge, but not the mere fact that some other person is shown to be more competent⁷.

Where the order for the appointment of a receiver by a county court was made by the judge, the power on any default by the receiver to direct his discharge and the appointment of another receiver may be exercised only by the judge⁸.

- 1 For the penalties for default see PARA 461 ante.
- 2 *Hills v Reeves* (1882) 31 WR 209 at 210, CA.
- 3 *Re Graham, Graham v Noakes* [1895] 1 Ch 66.
- 4 *Davy v Gronow* (1845) 14 LJ Ch 134.
- 5 *Mitchell v Condry* [1873] WN 232.
- 6 *Griffith v Griffith* (1751) 2 Ves Sen 400.
- 7 *Re Lord Bangor* (1818) 2 Mol 518 (mentally disordered person).
- 8 See CCR Ord 32 r 3(4).

UPDATE

445-481 Accounting, Discharge and Sureties

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457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

468 Default, misconduct and incompetence

TEXT AND NOTES--If a receiver fails to comply with any rule, practice direction or direction of the court the court may order him to attend a hearing to explain his non-compliance: CPR 69.9(1) (Pt 69 added by SI 2002/2058). At the hearing the court may make any order it considers appropriate, including (1) terminating the appointment of the receiver; (2) reducing the receiver's remuneration or disallowing it altogether; and (3) ordering the receiver to pay the costs of any party: CPR 69.9(2) (as added). Where (a) the court has ordered a receiver to pay a sum of money into court; and (b) the receiver has failed to do so, the court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate: CPR 69.9(3) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/469. Appointment of receiver on behalf of prior interest.

469. Appointment of receiver on behalf of prior interest.

A prior incumbrancer desiring to take possession is entitled to have the receiver obtained by a puisne incumbrancer discharged¹ and a nominee of his own substituted², but, on grounds of convenience, the existing receiver is generally appointed if he is willing to act as receiver in the action of the prior incumbrancer³. The receiver appointed in an administration action may be discharged at the instance of a mortgagee who is not a party to the action⁴. A receiver obtained by individual creditors may be discharged on a receiver being appointed on behalf of all creditors⁵.

1 *Morgan v Smith* (1830) 1 Mol 541; *Langton v Langton* (1855) 7 De GM & G 30; *Walmsley v Mundy* (1884) 13 QBD 807, CA; *Re Southern Rly Co, ex p Robson* (1885) 17 LR 121 at 140, 1r CA; *Re London United Breweries Ltd, Smith v London United Breweries Ltd* [1907] 2 Ch 511 at 512.

2 *Stanley v Coulthurst* [1868] WN 305; *Re Piccadilly Hotel Ltd, Paul v Piccadilly Hotel Ltd* [1911] 2 Ch 534 at 538; *Re Metropolitan Amalgamated Estates Ltd, Fairweather v Metropolitan Amalgamated Estates Ltd* [1912] 2 Ch 497. See also *Burke v Browne* (1843) 6 IR Eq 213.

3 *Duder v Amsterdamsch Trustees Kantoor* [1902] 2 Ch 132 at 144.

4 *Thomas v Brigstocke* (1827) 4 Russ 64.

5 *Salt v Donegall, Cocker v Donegall, Houlditch v Donegall* (1835) L & G temp Sugd 82.

UPDATE

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457-481 Accounting, Discharge and Sureties

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Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/470. Application for discharge by receiver or party.

470. Application for discharge by receiver or party.

Except in the case of a receiver appointed under Part VI of the Criminal Justice Act 1988¹ or under the Drug Trafficking Act 1994², a receiver will not be discharged on his own application unless he shows reasonable cause for discharge³, such as failing health or other incapacity⁴, or unless all parties interested consent⁵. A receiver appointed under the relevant provisions of the 1988 or 1994 Act may apply for an order to discharge him from his office by making an

application, which must be served, together with any evidence in support, on all persons affected by his appointment not less than seven days before the day fixed for the hearing of the application⁶.

When there is more than one party interested, the receiver will not be discharged on the application only of the party at whose instance he was appointed, for the receiver is appointed for the benefit of all parties⁷.

1 le under the Criminal Justice Act 1988 Pt VI (ss 71-103) (as amended): see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

2 le under the Drug Trafficking Act 1994 s 26 (as amended) or s 29: see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq.

3 *Smith v Vaughan* (1744) Ridg temp H 251.

4 *Richardson v Ward* (1822) 6 Madd 266.

5 *Cox v M'Namara* (1847) 11 I Eq R 356. See also PARA 453 ante.

6 See RSC Ord 115 rr 8(5), 23.

7 *Bainbrigge v Blair* (1841) 3 Beav 421 at 423 per Lord Langdale MR.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

470 Application for discharge by receiver or party

NOTES 1, 2--1988 Act Pt VI and 1994 Act ss 26, 29 replaced by provisions of Proceeds of Crime Act 2002 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 390 et seq).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/471. Mode of application for discharge.

471. Mode of application for discharge.

Application for the discharge of a receiver is made by motion or summons in the action; but an order for discharge may be made on the further consideration of an action without any special application for the purpose, and the cost of an unnecessary application for discharge may be disallowed in such a case¹.

The order, if conditional on the performance of some act by the receiver or other contingent event, is produced to the master who, on being satisfied that its conditions have been complied with, indorses a direction that the security be vacated. The order is then produced to the proper office of the Supreme Court or district registry and the guarantee is delivered to the solicitor on his receipt with a vacating note indorsed².

1 *Stilwell v Mellersh* (1851) 20 LJ Ch 356 at 362; *Tewart v Lawson* (1874) LR 18 Eq 490.

2 See the Supreme Court Practice 1997 para 30/2/4.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/472. Who may apply for discharge of receiver.

472. Who may apply for discharge of receiver.

An application for the discharge of a receiver may be made not only by parties to the cause, but by any stranger who is adversely affected by the continuance of the receivership, such as a mortgagee desiring to take possession¹; and when a company goes into liquidation the liquidator may apply for the discharge of a receiver appointed in a debenture holders' action². So also, a surety may apply for the discharge of a receiver who has absconded³ or become mentally disordered⁴.

Notice of the application should be served on the receiver⁵.

1 *Thomas v Brigstocke* (1827) 4 Russ 64; *Walmsley v Mundy* (1884) 13 QBD 807, CA; *Re St George's Estate* (1887) 19 LR Ir 566; *Preston v Tunbridge Wells Opera House Ltd* [1903] 2 Ch 323.

2 *Re Compagnie Générale de Bellegarde, Campbell v Compagnie Générale de Bellegarde* (1876) 2 ChD 181; *Tottenham v Swansea Zinc Ore Co Ltd* (1884) 32 WR 716; *Bartlett v Northumberland Avenue Hotel Co Ltd* (1885) 53 LT 611, CA. See also COMPANIES vol 15 (2009) PARA 1365.

3 *Shackel v Duke of Marlborough* (1844) 1 Seton's Judgments and Orders (6th Edn) 805. As to the position of sureties generally see PARA 474 et seq post.

4 *Webb v Cashel* (1847) 11 I Eq R 558.

5 *A-G v Haberdashers' Co* (1838) 2 Jur 915. The receiver should not appear: see PARA 453 text and note 4 ante.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

472 Who may apply for discharge of receiver

TEXT AND NOTES--A receiver or any party may apply for the receiver to be discharged on completion of his duties: CPR 69.10(1) (added by SI 2002/2058; and amended by SI 2004/1306). 'Receiver' includes a manager: CPR 69.1(2) (added by SI 2002/2058). The application notice must be served on the persons who were required under CPR 69.4 to be served with the order appointing the receiver: CPR 69.10(2) (added by SI 2004/1306).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(5) DISCHARGE OF A RECEIVER; VACATION OF OFFICE/473. Effect of discharge.

473. Effect of discharge.

An order for the discharge of a receiver deprives him of his right to receive, but does not put an end to his liability to account¹. The order, in fact, usually directs him to submit his final account and pay any balance that may be found due from him, and it is only on such payment that his security is directed to be vacated².

The discharge does not extinguish the receiver's right to indemnity in respect of his costs and remuneration out of the assets subject to the receivership, and the consequent return of those assets to the legal owner is subject to the lien which the discharged receiver continues to have over those assets. The lien exists independently of actual possession or a continuing right to possession of the assets³.

1 *Ingham v Sutherland* (1890) 63 LT 614; *Wellesley v Mornington* (1863) 13 I Ch R 559.

2 See *Lawson v Ricketts* (1849) 11 Beav 627.

3 *Mellor v Mellor* [1992] 4 All ER 10, [1992] 1 WLR 517 per Michael Hart QC.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

473 Effect of discharge

TEXT AND NOTES--An order discharging or terminating the appointment of a receiver may (1) require him to pay into court any money held by him; or (2) specify the person to whom he must pay any money or transfer any assets still in his possession; and (3) make provision for the discharge or cancellation of any guarantee given by the receiver as security: CPR 69.11(1) (Pt 69 added by SI 2002/2058). The order must be served on the persons who were required under CPR 69.4 to be served with the order appointing the receiver: CPR 69.11(2) (as added). 'Receiver' includes a manager: CPR 69.1(2) (as added).

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/474. Surety's legal and equitable liability.

(6) POSITION OF SURETIES

474. Surety's legal and equitable liability.

On any default by a receiver his sureties become immediately liable at law up to the limit fixed by the guarantee or bond. However, if a penal sum is fixed by the bond, they are relieved in equity on condition that they pay not only any balance due from the receiver, but also all sums for which the receiver would have been properly accountable to the court¹. Thus they are liable to the payment of interest on balances improperly retained in the receiver's hands, unless the laches of the parties renders it inequitable that the payment of interest should be enforced². They are also liable for the costs of any proceedings necessarily or properly incurred in consequence of the receiver's default, such as the costs of an attachment for failure to account, of applications for his discharge and the appointment of another person in his place, and of any proceedings taken to enforce the security³; but it would seem that they are not liable for any money for which the receiver, although accountable, cannot be made to account in the action⁴, and in no case may the total amount of their liability exceed the sum named in their security⁵.

1 *Dawson v Raynes* (1826) 2 Russ 466; *Re Graham, Graham v Noakes* [1895] 1 Ch 66; *Kenney v Employers' Liability Assurance Corpn* [1901] 1 IR 301, 1r CA. As to the position of sureties of a receiver of the estate of a mentally disordered person see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1101; MENTAL HEALTH vol 30(2) (Reissue) PARA 710.

2 *Dawson v Raynes* (1826) 2 Russ 466; *Re Herricks* (1853) 3 1 Ch R 183 at 187. Where the default is not that of the receiver himself, but of his executors after his death, the rate of interest is not a penal rate: *Clements v Beresford* (1846) 10 Jur 771.

3 *Maunsell v Egan* (1845) 8 1 Eq R 372 (affd (1846) 3 Jo & Lat 251); *Re Nugent's Estate* [1897] 1 IR 464. See also *Keily v Murphy* (1837) Sau & Sc 479.

4 *Re Walker* [1907] 2 Ch 120, CA; *Board of Trade v Employers' Liability Assurance Corpn Ltd* [1910] 2 KB 649, CA.

5 *Shackel v Duke of Marlborough* (1844) 1 Seton's Judgments and Orders (6th Edn) 805; *Watters v Watters* (1847) 11 I Eq R 335.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/475. Surety's right to benefit of receiver's indemnity.

475. Surety's right to benefit of receiver's indemnity.

Sureties are entitled to the benefit of any right of indemnity which the receiver enjoys against the assets, so that if a receiver makes default in paying into court a balance found due from him his sureties may nevertheless be excused if he is entitled to an indemnity for a larger amount¹.

1 *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd* [1910] 2 Ch 470, where it was decided that persons who supply goods on credit to a receiver and manager of a company on the assets of which debentures are charged may only claim to be paid out of the net amount of the receiver's indemnity against trade liabilities incurred by him. Should such indemnity be reduced in amount owing to a deficiency in his accounts, they may not hold his sureties liable for the deficiency as the suretyship bond is given to secure the estate and not the receiver's creditors.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/476. Duration of surety's liability.

476. Duration of surety's liability.

When a receiver who has been appointed manager for a limited time continues to act as manager beyond that time without the authority of the court, his sureties are nevertheless liable for the profits of such management which come to the hands of the receiver as receiver¹; and, similarly, sureties are liable for money coming to the hands of a receiver before his appointment is perfected by the completion of his security².

The security given by the guarantee of a surety is not a continuing security, but usually comes to an end on the death of the receiver, except as to existing default and default by the personal representatives in their administration of the receiver's estate³. When, after the receiver's death, judgment has been recovered against a surety, and the judgment has been satisfied, he is freed from any further liability, except perhaps for costs⁴.

The discharge in bankruptcy of the receiver does not discharge the surety⁵.

1 *Re Herricks* (1853) 3 I Ch R 183 at 186.

2 *Smart v Flood & Co* (1883) 49 LT 467.

3 As to where the default is not that of the receiver himself but of his executors after his death see PARA 474 note 2 ante. As to the discharge of a surety see PARA 481 post.

4 *Re Herricks* (1853) 3 I Ch R 183 at 194; but see *Keily v Murphy* (1837) 5 Sa & Sc 479; *Watters v Watters* (1847) 11 I Eq R 335; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1202.

5 See the Insolvency Act 1986 s 281(7); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 644.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/477. Enforcement of surety's liability.

477. Enforcement of surety's liability.

A statement under the hand of the master is conclusive evidence of the sum due from the surety. This is expressly provided in the form of guarantee¹ and it is usual for the sureties to

submit to the jurisdiction of the court by which the receiver was appointed and to offer to have the accounts taken against themselves in the action².

As a general rule, proceedings may not be taken against a surety until proper steps have been taken against the receiver to enforce the performance of his duty and the receiver has made default; but if the receiver, after having made default in passing his accounts and paying the balance into court, has absconded or become bankrupt or died, or if for any other reason it is impracticable to pursue the ordinary course against him, proceedings may be commenced against the surety even before the actual balance due from the receiver has been ascertained³. The surety may obtain an order for the stay of such proceedings on payment into court of the maximum sum guaranteed⁴ or of the balance found due from the receiver⁵, and on such payment may have the security vacated so far as he is concerned⁶.

1 See *Smart v Flood & Co* (1883) 49 LT 467.

2 *Re Graham, Graham v Noakes* [1895] 1 Ch 66; *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd* [1910] 2 Ch 470 at 473. A similar provision was made in the form of undertaking formerly prescribed where the amount for which security was required did not exceed £1,000 under the now replaced RSC Ord 30 r 2(3). Any security is now given by guarantee: see PARA 364 ante.

3 *Ludgater v Channell* (1851) 3 Mac & G 175. See also FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1103 et seq.

4 *Watters v Watters* (1847) 11 I Eq R 335.

5 *Walker v Wild* (1816) 1 Madd 528, where by consent payment was allowed by instalments; *Maunsell v Egan* (1845) 8 I Eq R 372 (affd (1846) 3 Jo & Lat 251).

6 In *Mann v Stennett* (1845) 8 Beav 189, payment to the plaintiff's solicitor was held insufficient without evidence of the solicitor's authority to receive it. See also *Webb v Cashel* (1847) 11 I Eq R 558.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/478. Surety's rights against other parties.

478. Surety's rights against other parties.

A surety who has been called upon to make any payment has a right to be indemnified by his principal to the whole amount of such payment¹, and also by his co-sureties in proportion to the amount for which each surety has made himself liable². This is an equitable right, in the

absence of express provision or of any contract between the parties³. The right of indemnity against principal and co-sureties is not limited to the actual sums disbursed, but extends to interest and to the costs of enforcing the claim⁴.

As against any beneficial interest of the receiver himself in the property to which the order relates, a surety is entitled to an order declaring such interest liable to make good the amount he has been compelled to pay⁵; and he is entitled to a lien for his disbursements on any balance payable to the receiver out of court, and may obtain an injunction restraining the receiver from taking out such balance without discharging the surety's claim⁶.

1 See further FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1147 et seq.

2 *Re Macdonaghs* (1876) IR 10 Eq 269. See also FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1165 et seq.

3 *Dering v Earl of Winchelsea* (1787) 1 Cox Eq Cas 318. See also *Brandon v Brandon* (1859) 3 De G & J 524, where certain property of a receiver, which had been expressly excluded from an assignment to his sureties by way of indemnity, was nevertheless held liable to them on general equitable principles.

4 *Salkeld v Abbott* (1832) Hayes & Jo 110; *Brandon v Brandon* (1859) 3 De G & J 524; *Re Swan's Estate* (1869) IR 4 Eq 209, Ir CA (following *Hitchman v Stewart* (1855) 3 Drew 271, and overruling *Onge v Truelock* (1828) 2 Mol 31 at 42). As to rates of interest see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq.

5 *Brandon v Brandon* (1859) 3 De G & J 524.

6 *Glossop v Harrison and Hawkes* (1814) Coop G 61. See also *Wright v Morley*, *Morley v St Alban* (1805) 11 Ves 12.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/479. Enforcement of surety's rights.

479. Enforcement of surety's rights.

For the purpose of enforcing the surety's claim, leave may be obtained to proceed against the principal and co-sureties or their representatives¹, but without prejudice to the question whether representatives can be compelled to account in such proceedings².

1 *Woods v Creaghe* (1828) 2 Hog 50; *Henderson v Skerrett* (1843) 5 I Eq R 404. See also the Mercantile Law Amendment Act 1856 s 5; *Salkeld v Abbott* (1832) Hayes 576; *Shackel v Duke of Marlborough* (1844) 1 Seton's Judgments and Orders (6th Edn) 805; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1141.

2 *Ludgater v Channell* (1851) 3 Mac & G 175.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/480. Surety's position regarding the examination of receiver's accounts.

480. Surety's position regarding the examination of receiver's accounts.

A surety is not as a rule entitled to attend at any examination of the receiver's accounts, and still less to have them reopened¹; but where the receiver has become bankrupt or has died insolvent, or it is reasonably certain that he will not be able to pay the balance due from him, the surety may obtain an order giving him leave to attend the examination of accounts at his own expense², and also, in a proper case, to have past accounts reopened, on the conditions of paying the costs of such reopening and new account and also interest from the date of the order on the sum which he may eventually be called upon to pay³.

1 *Re Birmingham Brewing, Malting and Distilling Co Ltd* (1883) 52 LJ Ch 358 (a case relating to a liquidator for whom a guarantee society had become surety).

2 *Simmons v Rose* (1860) and *Sharp v Wright* (1878) cited in 2 Daniell's Chancery Practice (8th Edn) 1501. See also *Dawson v Raynes* (1826) 2 Russ 466; *Shuff v Holdaway* (1857) cited in 2 Daniell's Chancery Practice (8th Edn) 1500; *National Bank v Kenney* [1898] 1 IR 197.

3 *Re Birmingham Brewing, Malting and Distilling Co Ltd* (1883) 52 LJ Ch 358.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/2. ACCOUNTING, DISCHARGE AND SURETIES/(6) POSITION OF SURETIES/481. Discharge of surety.

481. Discharge of surety.

So long as the receiver is not in default, a surety will not be discharged at his own request, unless he has accepted the position by inadvertence¹, or can prove underhand practice in which the receiver is implicated², or unless it is clearly for the benefit of the parties that he should be discharged³; but he may be discharged with the consent of all parties, including any co-surety and the receiver, the order being made without prejudice to the liability of the receiver and any other surety for past and future defaults of the receiver⁴.

When a receiver has died or absconded or become bankrupt, his sureties may obtain an order for their discharge on payment into court of the balances which may be certified to be due from him⁵.

1 *Swain v Smith* (1827) 1 Seton's Judgments and Orders (7th Edn) 775 at 776, where the surety had become such in breach of his partnership articles. Cf *Hunter v Pring* (1845) 8 I Eq R 102.

2 *Hamilton v Brewster* (1820) 2 Mol 407.

3 *Griffith v Griffith* (1751) 2 Ves Sen 400.

4 *O'Keeffe v Armstrong* (1852) 2 I Ch R 115.

5 *Shuff v Holdaway* (1857) cited in 2 Daniell's Chancery Practice (8th Edn) 1500.

UPDATE

445-481 Accounting, Discharge and Sureties

RSC Ord 30 replaced by CPR Sch 1 RSC Ord 30, subsequently revoked by SI 2002/2058. As to receivers' accounts, the giving of security and the discharge of receivers see CPR Pt 69 (added by SI 2002/2058); and individual paragraphs.

457-481 Accounting, Discharge and Sureties

RSC and CCR replaced by Civil Procedure Rules 1998, SI 1998/3132 ('the CPR'). See generally CIVIL PROCEDURE.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/482. Appointment of manager of trade or business.

3. MANAGERS

(1) APPOINTMENT

482. Appointment of manager of trade or business.

With a view to the preservation of property, it is often necessary that the receiver appointed by the court should also act as manager of a trade or business¹, but the court does not assume the permanent management of any business or undertaking², and for this reason, and because of the power of expenditure with which a manager is invested, the appointment of a manager is always for a limited time (three months, according to the modern practice), specified in the order³. In a proper case the time will be extended for a further limited period or periods⁴. A manager may be appointed of a trade or business carried on abroad⁵.

A manager appointed under the law of any part of the United Kingdom in respect of any property or undertaking of a company may exercise his powers in any other part of the United Kingdom so far as their exercise is not inconsistent with the law applicable there⁶.

1 *Collins v Barker* [1893] 1 Ch 578 at 585. Generally the same person is appointed both receiver and manager, but in *Tempest v Ord* (1816) 2 Mer 55 different persons were appointed. A person with special qualifications may be desirable: see PARA 353 ante.

2 *Rowlands v Evans, Williams v Rowlands* (1861) 30 Beav 302 at 310; *Gardner v London, Chatham and Dover Rly Co, Drawbridge v London, Chatham and Dover Rly Co, Gardner v London, Chatham and Dover Rly Co (No 2), Imperial Merchantile Credit Association v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 212; *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468 at 472, CA. See also MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 367.

3 *Day v Sykes, Walker & Co Ltd* (1886) 55 LT 763; *Re Wood Green and Hornsey Steam Laundry Ltd, Trenchard v Wood Green and Hornsey Steam Laundry Ltd* [1918] 1 Ch 423.

4 The application is made by summons in chambers.

5 *Codrington v Johnstone* (1838) 1 Beav 520; *Bunbury v Bunbury* (1839) 1 Beav 318 at 331, 336 (affd 8 LJ Ch 297); *Sheppard v Oxenford* (1855) 1 K & J 491 at 501, CA; *Re South Western of Venezuela (Barquisimeto) Rly Co* [1902] 1 Ch 701; *Re Huinac Copper Mines Ltd, Matheson & Co v Huinac Copper Mines Ltd* [1910] WN 218.

6 See the Administration of Justice Act 1977 s 7; and PARA 312 ante. For the meaning of 'United Kingdom' see PARA 312 note 2 ante.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/483. Instances of appointment of manager.

483. Instances of appointment of manager.

The court may appoint a manager of the business of a deceased person pending the constitution of a legal representative¹, or to manage the business of a testator pending sale in an administration action², or when trustees of a will are not themselves qualified to carry on the testator's business and are unable to agree on the appointment of a manager³.

There are numerous other cases in which a manager is appointed for the preservation of a business or property pending litigation as to the rights of the parties⁴ or pending realisation by sale⁵, and, in a case of mismanagement, a receiver and manager may be appointed even against a mortgagee in possession⁶.

1 *Steer v Steer* (1864) 2 Drew & Sm 311; *Overington v Ward* (1865) 34 Beav 175; *Blackett v Blackett* (1871) 24 LT 276; *Re Baker, Giddings v Baker* (1882) 26 Sol Jo 682. Cf *Spencer v Shaw* [1875] WN 115.

2 *Re Brooke, Brooke v Brooke* [1894] 2 Ch 600; *Re Hodges, Hodges v Hodges* [1899] 1 IR 480 at 482; *Ramsay v Simpson* [1899] 1 IR 194, Ir CA.

3 *Hart v Denham* [1871] WN 2; *Re Irish, Irish v Irish* (1888) 40 ChD 49.

4 *Hall v Hall* (1850) 3 Mac & G 79 at 91; *Sheppard v Oxenford* (1855) 1 K & J 491, CA, where the defendant, sole director of a partnership association, had left the country after the writ was issued; *Hyde v Warden* (1876) 1 Ex D 309, CA; *Howell v Dawson* (1884) 13 QBD 67, DC; *Duke of Grafton v Taylor*, *Earl Manvers v Taylor* (1891) 7 TLR 588, where a manager was appointed at the instance of a legal mortgagee of landed estates who desired to avoid the responsibility of becoming 'mortgagee in possession'. As to the appointment of a receiver and manager of a company's or partnership's undertaking and assets see *Featherstone & Cooke* (1873) LR 16 Eq 298; *Trade Auxiliary Co v Vickers* (1873) LR 16 Eq 303; *Stanfield v Gibbons* [1925] WN 11; PARTNERSHIP vol 79 (2008) PARA 162 et seq.

5 *Wilson v Greenwood* (1818) 1 Swan 471; *Taylor v Neate* (1888) 39 ChD 538.

6 *Rowe v Wood* (1822) 2 Jac & W 553.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/484. Appointment of manager at the instance of incumbrancers.

484. Appointment of manager at the instance of incumbrancers.

The most frequent case in which a manager is appointed is at the instance of incumbrancers such as debenture holders whose security includes, either expressly or by implication, the goodwill of a business, or where it is essential to the preservation of the security that the business be kept in operation¹. The appointment is made solely with a view to the realisation of the security by the sale of the business as a going concern, and an incumbrancer is only entitled to a sale of what is included in his security. If the business is not included in the security, the court has no jurisdiction to appoint a manager, except so far as is necessary to preserve what is in fact included, in which case such limited powers of management may be given as will preserve the property included in the security, for example where a licence is included although the goodwill is not expressly mentioned².

Debenture holders of a company incorporated for a public purpose are not entitled to a sale and consequently may not obtain the appointment of a manager³. Where the management of a public undertaking is entrusted by statute to certain persons with defined powers, a manager may not be appointed nor a sale ordered at the instance of a mortgagee⁴ unless, perhaps, the persons entrusted with the management act unreasonably or perversely⁵, or have interests which conflict with their duty⁶.

1 *Chaplin v Young* (1862) 6 LT 97 (mortgage of a newspaper); *Peek v Trinsmaran Iron Co* (1876) 2 ChD 115; *Truman & Co v Redgrave* (1881) 18 ChD 547 (mortgage to brewers of licensed premises, together with the trade fixtures, goodwill and licences); *Taylor v Soper* (1890) 62 LT 828, where the brewers' mortgage was in similar terms; *Makins v Percy Ibotson & Sons* [1891] 1 Ch 133; *Campbell v Lloyd's*, *Barnett's and Bosanquet's Bank Ltd* (1889) [1891] 1 Ch 136n; *Edwards v Standard Rolling Stock Syndicate* [1893] 1 Ch 574; *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA (mortgage of land, mines, beds and seams of coal, and all buildings and erections, fixed motive power, plant etc); *Fairfield Shipbuilding and Engineering Co Ltd v London and East Coast Express SS Co Ltd* [1895] WN 64 (statutory mortgage of ship); *Re Victoria Steamboats Ltd*, *Smith v Wilkinson* [1897] 1 Ch 158 (debenture of a trading company charging its undertaking and all its property); *Re Leas Hotel Co*, *Salter v Leas Hotel Co* [1902] 1 Ch 332 (debenture charging all the buildings, property, stock-in-trade, furniture, chattels and effects of a hotel company); *Re A Boynton Ltd*, *Hoffmann v A Boynton Ltd* [1910] 1 Ch 519 at 520 (debenture charging all the property and assets of a hotel company). See also COMPANIES vol 15 (2009) PARA 1372; and MORTGAGE vol 77 (2010) PARA 563.

2 As to mortgagees and the appointment of a receiver and manager see generally MORTGAGE vol 77 (2010) PARA 101 et seq. Cf *Leney & Sons Ltd v Callingham and Thompson* [1908] 1 KB 79, CA; and PARA 487 post.

3 As to companies and the appointment of a receiver and manager see COMPANIES vol 15 (2009) PARA 1372; and as to the appointment of an administrative receiver see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 391. See also PARA 302 ante.

4 *Frupp v Chard Rly Co, Frupp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1853) 11 Hare 241; *Potts v Warwick and Birmingham Canal Navigation Co* (1853) Kay 142; *Ames v Birkenhead Docks Trustees* (1855) 20 Beav 332; *De Winton v Brecon Corp* (1859) 26 Beav 533 at 542 (statutory corporation market); *Gardner v London, Chatham and Dover Rly Co, Drawbridge v London, Chatham and Dover Rly Co, Gardner v London, Chatham and Dover Rly Co (No 2), Imperial Mercantile Credit Association v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201; *Kerry County Council v Tralee and Fenit Pier and Harbour Comrs* [1921] 1 IR 71, Ir CA. See also PARA 355 note 9 ante.

5 *Carmichael v Greenock Harbour Trustees* [1910] AC 274, HL.

6 *Frupp v Chard Rly Co, Frupp v Bridgewater and Taunton Canal and Stolford Rly and Harbour Co* (1853) 11 Hare 241.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/485. Mining properties.

485. Mining properties.

A manager may be appointed of a mining property where any cessation of business might cause serious damage to the mine or forfeiture of a lease under which it is held¹. Thus a mortgagee of an open mine and of the fixed plant used for its working may obtain the appointment of a manager even though the business carried on is not in terms comprised in his security².

1 *Gibbs v David* (1875) LR 20 Eq 373; *Peek v Trinsmaran Iron Co* (1876) 2 ChD 115; *Boyle v Bettws Llantwit Colliery Co* (1876) 2 ChD 726; *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA. See also MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 307,.

2 *Campbell v Lloyd's, Barnett's and Bosanquet's Bank Ltd* (1889) [1891] 1 Ch 136n; *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA. See also *Peek v Trinsmaran Iron Co* (1876) 2 ChD 115 (a debenture holders' case). Where a mining property held for a short term was subject to several mortgages, only one time to redeem was allowed to the successive incumbrances: *Lewis v Aberdare and Plymouth Co* (1884) 53 LJ Ch 741.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/486. Appointment of a manager as between co-owners.

486. Appointment of a manager as between co-owners.

As between co-owners of land, it was formerly held that a receiver, and a fortiori a manager, could not be appointed unless a case of actual exclusion were made out¹. Now, however, co-owners, whether entitled beneficially as joint tenants or tenants in common, hold the legal estate as trustees of land², and the principles on which the appointment is made against trustees appear to apply.

In the case of mining property, the working of the mine must be regarded for this purpose as a trade or business carried on by the co-owners in partnership³, and a manager is not appointed except for the purpose of dissolution⁴.

1 *Sandford v Ballard (No 2)* (1864) 33 Beav 401.

2 As to joint tenancies and tenancies in common see REAL PROPERTY vol 39(2) (Reissue) PARAS 189 et seq, 207 et seq.

3 *Jefferys v Smith* (1820) 1 Jac & W 298.

4 *Roberts v Eberhardt* (1853) Kay 148. See also MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 366 et seq.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/487. Appointment of manager at instance of landlord.

487. Appointment of manager at instance of landlord.

Although a lessor, as such, usually has insufficient interest in the business carried on by his lessee on the demised premises to justify the appointment of a manager, yet in particular cases he may be able to show such an interest as renders it just and convenient that a receiver appointed at his instance should be authorised to exercise such powers of management as may be necessary to preserve the property, including a licence¹.

1 Thus, where brewers had demised licensed premises to a lessee, taking covenants from him to do nothing that might endanger the licences and to surrender them on the determination of the tenancy, and the lessee had threatened to vacate the premises, the receiver appointed at the instance of the lessors, pending trial of their action for recovery of possession, was authorised to take possession of the licences, to keep the premises open as an hotel and to do all such acts as might be necessary for that purpose and for the purpose of preserving the licences from risk of forfeiture: *Leney & Sons Ltd v Callingham and Thompson* [1908] 1 KB 79, CA, modifying the form of order in *Charrington & Co Ltd v Camp* [1902] 1 Ch 386, and *Whitbread & Co v Grain* (1907) 23 TLR 462, which had ordered delivery to the receiver of all books and papers relating to the lessee's business, and authorised the receiver to appoint some fit person to carry on the business under his supervision.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/488. General effect of appointment of a manager.

488. General effect of appointment of a manager.

The appointment of a manager by the court does not dissolve or annihilate any existing firm or company, but it takes the conduct of the business out of the hands of those who previously carried it on and vests entire control in the manager¹. In no case is a manager appointed by the court to be regarded as the agent or employee of the individual, firm or company whom he displaces², although a manager appointed out of court may be so regarded³.

Although a receiver and manager appointed by the court acts as an officer of the court, he does not necessarily, by carrying on the business, dispossess the previous owner or occupier of the business premises, unless, perhaps, where he has taken possession by direction of the court. He is to be regarded rather as a custodian or caretaker on behalf of the owners. Thus, he is unable to resist a distraint for rates some portion of which is due in respect of a period before his appointment⁴; nor may he insist on a continuance of a supply of gas or electricity to the premises without paying arrears due to the supplier⁵. The appointment of a receiver and manager of a business will not generally operate to determine trade contracts⁶.

1 *Moss SS Co Ltd v Whinney* [1912] AC 254, HL; *Minford v Carse and Hunter* [1912] 2 IR 245 at 273, Ir CA; *Parsons v Sovereign Bank of Canada* [1913] AC 160, PC. The company's affairs do not cease to be its affairs and become solely those of the receiver and manager (*R v Board of Trade, ex p St Martins Preserving Co Ltd* [1965] 1 QB 603, [1964] 2 All ER 561, DC), and the appointment of a receiver out of court does not necessarily divest the company of the power to pursue an action (*Newhart Development Ltd v Co-operative Commercial Bank Ltd* [1978] QB 814, [1978] 2 All ER 896, CA). See also *Meigh v Wickenden* [1942] 2 KB 160, [1942] 2 All ER 68, DC, where the receiver and manager appointed by debenture holders was held to be an 'occupier' of a factory

within what is now the Factories Act 1961 s 155(1) (as to which see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 862). Income tax is assessed on the same basis as before, but on the receiver and manager: see the Taxes Management Act 1970 s 75(1); and INCOME TAXATION vol 23(2) (Reissue) PARA 1247.

2 *De Grelle & Co v Bull and Ward* (1894) 10 TLR 198; *Burt, Boulton and Hayward v Bull* [1895] 1 QB 276 at 279, CA; *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468 at 470, CA. It is for this reason that service on a receiver and manager appointed in a partnership action is not good service on the partners: *Re Flowers & Co* [1897] 1 QB 14, CA (a bankruptcy case).

3 *Channel Airways Ltd v Manchester Corpn* [1974] 1 Lloyd's Rep 456.

4 *Re Marriage, Neave & Co, North of England Trustee Debenture and Assets Corpn v Marriage, Neave & Co* [1896] 2 Ch 663, CA (distinguishing *Richards v Kidderminster Overseers, Richards v Kidderminster Corpn* [1896] 2 Ch 212, where the receiver and manager had been appointed out of court under the provisions of a debenture trust deed); *Gyton v Palmour* [1945] KB 426, [1944] 2 All ER 540, DC. See also *De Montmorency v Pratt* (1849) 12 I Eq R 411.

5 *Paterson v Gas Light and Coke Co* [1896] 2 Ch 476, CA (distinguished in *Granger v South Wales Electrical Power Distribution Co* [1931] 1 Ch 551); *Husey v London Electric Supply Corpn* [1902] 1 Ch 411, CA. See also COMPANIES vol 15 (2009) PARA 1376.

6 *Parsons v Sovereign Bank of Canada* [1913] AC 160, PC. See also *Re British Tea Table Co (1897) Ltd, Pearce v British Tea Table Co (1897) Ltd* (1909) 101 LT 707 (payment of solicitor out of money in his hands); and PARA 490 post.

UPDATE

488 General effect of appointment of a manager

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(1) APPOINTMENT/489. Effect of appointment of a manager as regards employees of the company and directors.

489. Effect of appointment of a manager as regards employees of the company and directors.

Since it effects a change in the personality of the employer, the appointment of a manager in a debenture holders' action operates as a general rule as a dismissal of the employees of the company¹, although possibly not in all cases², and may give rise, in the case of any employee whose services are not retained by the manager, to a claim against the company for damages for wrongful dismissal or breach of contract³. It does not, however, affect the position of directors or disentitle them to their ordinary remuneration⁴, nor does it necessarily determine the right of debenture trustees to remuneration⁵.

The appointment out of court of a manager as agent of the company will not operate as an automatic dismissal of an employee of the company unless the continuation of the employment would be inconsistent with the appointment⁶.

1 *Reid v Explosives Co* (1887) 19 QBD 264, CA; *Midland Counties District Bank Ltd v Attwood* [1905] 1 Ch 357 at 362; *Robinson Printing Co Ltd v Chic Ltd* [1905] 2 Ch 123 at 134; *Measures Bros Ltd v Measures* [1910] 2 Ch 248 at 256, CA; *Nicoll v Cutts* [1985] BCLC 322 at 324-325, CA, obiter per Dillon LJ. See also COMPANIES vol 15 (2009) PARA 1373. The same principle appears to apply where the appointment is made over a partnership business.

2 *Parsons v Sovereign Bank of Canada* [1913] AC 160 at 171, PC (labourers on an agricultural estate); *International Harvester Export Co v International Harvester Australia Ltd* (1982) 7 ACLR 391, [1983] 1 VR 539. Cf *Reid v Explosives Co* (1887) 19 QBD 264 at 269, CA.

3 *Reid v Explosives Co* (1887) 19 QBD 264, CA; *Measures Bros Ltd v Measures* [1910] 1 Ch 336 at 344; *Parsons v Sovereign Bank of Canada* [1913] AC 160, PC. Where a new contract of employment with the receiver is made, however, only nominal damages may be recovered: *Brace v Calder* [1895] 2 QB 253 at 261, CA. Dismissal by a receiver does not release an employee from covenants against trade competition which have been imposed for the protection of goodwill: *Welstead v Hadley* (1904) 21 TLR 165, CA. As to the adoption of contracts of employment by an administrative receiver see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 402.

4 *Re South Western of Venezuela (Barquisimeto) Rly Co* [1902] 1 Ch 701.

5 The terms of the trust deed must be considered in each case: *Re Anglo-Canadian Lands (1912) Ltd, Park v Anglo-Canadian Lands (1912) Ltd* [1918] 2 Ch 287, distinguishing *Re Locke and Smith Ltd, Wigan v Locke and Smith Ltd* [1914] 1 Ch 687, CA.

6 *Griffiths v Secretary of State for Social Services* [1974] QB 468 at 485-486, [1973] 3 All ER 1184 at 1198-1199 per Lawson J, applying obiter dictum of Plowman J in *Re Foster Clark Ltd's Indenture Trusts, Loveland v Horscroft* [1966] 1 All ER 43 at 49, [1966] 1 WLR 125 at 132. See also *Re Mack Trucks (Britain) Ltd* [1967] 1 All ER 977, [1967] 1 WLR 780; *Deaway Trading Ltd v Calverley* [1973] 3 All ER 776, NIRC; and COMPANIES vol 15 (2009) PARA 1342.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(2) POWERS, INDEMNITY, REMUNERATION AND DISCHARGE OF MANAGER/490. Manager's power to carry on business.

(2) POWERS, INDEMNITY, REMUNERATION AND DISCHARGE OF MANAGER

490. Manager's power to carry on business.

By virtue of his appointment, the manager has power to buy and sell, to discharge outgoings, to engage and dismiss employees¹, to provide for the payment of current expenses², and, unless expressly prohibited, to enter into fresh contracts in the usual course of business³. He must carry on the business in the usual way, but without entering into any speculative dealings⁴ or undertakings in which his personal interest may conflict with his duty⁵. He must strictly observe the terms of his appointment and will be disallowed expenditure incurred and remuneration after the expiration of the term of his appointment⁶. He is frequently authorised to appoint a sub-manager or to employ agents to conduct the business under his supervision⁷.

It is the manager's duty to preserve the goodwill as well as the assets of the business, and he is not allowed, therefore, as a rule, to disregard contracts entered into before his appointment, even though the assets could be realised to much greater advantage if contracts were disregarded⁸. If he causes the company to fulfil existing contracts, he does so subject to any rights which would otherwise have affected the company, such as rights of set-off⁹ or contractual lien¹⁰. For the protection of goodwill a receiver and manager may properly bind his employees, within legal limits, not to compete in business¹¹. On the other hand a purchaser of a business from a receiver and manager may not insist on a covenant by the receiver and manager not to carry on a competing business¹².

A receiver and manager is entitled to an order for delivery of all books relating to the conduct of the business¹³; but a receiver and manager appointed in a debenture holders' action may not insist on retaining such books as against a liquidator, where the business and management have come to an end¹⁴.

- 1 *Taylor v Neate* (1888) 39 ChD 538; *Howard v Danner* (1901) 17 TLR 548; *Welstead v Hadley* (1904) 21 TLR 165, CA. Cf *A-G v Schonfeld* [1980] 3 All ER 1, [1980] 1 WLR 1182. As to the adoption of contracts of employment by an administrative receiver see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 402.
- 2 *Re Manchester and Milford Rly Co, ex p Cambrian Rly Co* (1880) 14 ChD 645 at 653, CA.
- 3 The powers of management are sometimes limited to contracts subsisting at the date of appointment (*Strapp v Bull, Sons & Co, Shaw v London School Board* [1895] 2 Ch 1, CA), or to contracts not involving more than a certain expenditure (*Taylor v Neate* (1888) 39 ChD 538 at 545).
- 4 *Taylor v Neate* (1888) 39 ChD 538 at 544; *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd (No 2)* [1907] 1 Ch 528 at 535.
- 5 *Re Eastern and Midlands Rly Co* (1890) 90 LT Jo 20.
- 6 *Re Wood Green and Hornsey Steam Laundry Ltd, Trenchard v Wood Green and Hornsey Steam Laundry Ltd* [1918] 1 Ch 423.
- 7 See *Re Herricks* (1853) 3 I Ch R 183 at 185, and the orders in *Porter v Corbett* (1900) and *Treby v Tilley* (1900) 1 Seton's Judgments and Orders (7th Edn) 731.
- 8 *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468, CA. The receiver and manager may repudiate a contract where repudiation would not adversely affect the realisation of assets or seriously affect the future trading prospects of the company: *Airline Airspares Ltd v Handley Page Ltd* [1970] Ch 193, [1970] 1 All ER 29n.
- 9 *Rother Iron Works Ltd v Canterbury Precision Engineers Ltd* [1974] QB 1, [1973] 1 All ER 394, CA. Cf *NW Robbie & Co Ltd v Witney Warehouse Co Ltd* [1963] 3 All ER 613, [1963] 1 WLR 1324, CA, where, under the debenture, the debts owed to a company were assigned in equity to the debenture holder as they arose, so that cross-claims not existing when the debts arose could not be set off against them.
- 10 *George Barker (Transport) Ltd v Eynon* [1974] 1 All ER 900, [1974] 1 WLR 462, CA.
- 11 *Howard v Danner* (1901) 17 TLR 548.
- 12 *Re Irish, Irish v Irish* (1888) 40 ChD 49, commented on in *Boorne v Wicker* [1927] 1 Ch 667. See also *Re Gent, Gent-Davis v Harris* (1892) 40 WR 267.
- 13 1 Seton's Judgments and Orders (7th Edn) 728. See also PARA 401 ante.
- 14 *Engel v South Metropolitan Brewing and Bottling Co* [1892] 1 Ch 442.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(2) POWERS, INDEMNITY, REMUNERATION AND DISCHARGE OF MANAGER/491. Manager's borrowing powers.

491. Manager's borrowing powers.

A manager is authorised to borrow money when required for the proper conduct of the business¹, and to give a first charge on the assets for the amount²; but in general he has no power to charge assets except by leave of the court³, and borrowing will not be sanctioned, even for the completion of existing contracts, if it is apparent that no direct profit will result⁴. In very urgent cases a power to borrow is conferred on appointment, but this is only on proper evidence of the immediate necessity. The proper course is to apply by summons after the appointment⁵. A receiver and manager appointed by the court on behalf of secured creditors has no power in the course of business to charge the assets in favour of unsecured creditors so as to give them priority, and he will not be estopped from denying the validity of his act, if he gives such a charge⁶.

A manager is sometimes authorised to advance money of his own for the purpose of the business, and in such a case the court generally gives him a charge on the assets for the amount of the advance with interest at 5 per cent⁷, but expenditure on any particular object will not be sanctioned unless the court is satisfied that it is likely to promote an advantageous sale⁸.

- 1 *Lathom v Greenwich Ferry Co* (1895) 72 LT 790; *Milward v Avill and Smart Ltd* [1897] WN 162.
- 2 *Re British Power Traction and Lighting Co Ltd, Halifax Joint Stock Banking Co Ltd v British Power Traction and Lighting Co Ltd* [1906] 1 Ch 497; *Re Glasdir Copper Mines Ltd, English Electro-Metallurgical Co Ltd v Glasdir Copper Mines Ltd* [1906] 1 Ch 365, CA; *Re A Boynton Ltd, Hoffmann v A Boynton Ltd* [1910] 1 Ch 519; *Boehm v Goodall* [1911] 1 Ch 155; *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468 at 474, CA.
- 3 *Moss SS Co Ltd v Whinney* [1912] AC 254, HL.
- 4 *Re Thames Ironworks, Shipbuilding and Engineering Co Ltd, Farrer v Thames Ironworks, Shipbuilding and Engineering Co Ltd* (1912) 106 LT 674; *Re Great Cobar Ltd, Beeson v Great Cobar Ltd* [1915] 1 Ch 682. Cf *Re Newdigate Colliery Ltd, Newdegate v Newdigate Colliery Ltd* [1912] 1 Ch 468, CA.
- 5 As to expenditure of doubtful propriety, and as to unauthorised expenditure, see PARA 451 ante.
- 6 *Moss SS Co Ltd v Whinney* [1912] AC 254 at 266, HL, per Lord Atkinson.
- 7 *Re Bushell, ex p Izard* (1883) 23 ChD 75 at 80, CA.
- 8 *Securities and Properties Corp'n Ltd v Brighton Alhambra Ltd* (1893) 62 LJ Ch 566.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(2) POWERS, INDEMNITY, REMUNERATION AND DISCHARGE OF MANAGER/492. Manager's right to indemnity.

492. Manager's right to indemnity.

A manager is entitled to an indemnity out of assets against all expenses and liabilities properly incurred in the execution of his duty¹. He may enforce this indemnity even after his discharge². Expenses and liabilities incurred in good faith in the ordinary course of business are treated prima facie as having been properly incurred, but a receiver and manager³ who has made default in paying into court a balance found due from him may not to that extent claim an indemnity without making good the default⁴. The indemnity is in all cases limited to the assets under the control of the court⁵.

If a manager incurs liabilities to any extent without the previous sanction of the court or in excess of the limit of any borrowing powers conferred on him by the court, he is not entitled to an indemnity unless he satisfies the court that the liabilities were in each case properly and reasonably incurred, and that he was justified in incurring them without first applying for leave. It is not sufficient for him to show that they were incurred in good faith and in the ordinary course of business⁶.

The creditors of the receiver and manager will be entitled to be subrogated to him in respect of any right of indemnity he may have against the assets unless it appears that he did not intend to pledge his credit and that they did not rely upon it; but they have no better right than the receiver himself, and if, in consequence of default in paying in his balances, the receiver is entitled only to a partial indemnity, the creditors must look to the receiver personally for any balance of their debts which they are unable to recover out of the assets⁷.

1 *Burt, Boulton and Hayward v Bull* [1895] 1 QB 276, CA; *Strapp v Bull, Sons & Co, Shaw v London School Board* [1895] 2 Ch 1, CA. See also *Scott v Nesbitt* (1808) 14 Ves 438 at 444; *Fraser v Burgess* (1860) 13 Moo PCC 314 at 344; and COMPANIES vol 15 (2009) PARA 1375.

2 *Levy v Davis* [1900] WN 174.

3 As to the indemnity of a receiver appointed manager see *O'Neill v M'Grorty* [1915] 1 IR 1.

4 As to companies and the right of indemnity generally see COMPANIES vol 15 (2009) PARA 1375.

5 *Boehm v Goodall* [1911] 1 Ch 155 at 161.

6 As to companies and the right of indemnity generally see COMPANIES vol 15 (2009) PARA 1375. As to the personal liability of a manager on contracts entered into by him see PARAS 427, 431 ante.

7 As to companies and the right of indemnity generally see COMPANIES vol 15 (2009) PARA 1375.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(2) POWERS, INDEMNITY, REMUNERATION AND DISCHARGE OF MANAGER/493. Manager's remuneration.

493. Manager's remuneration.

The remuneration of a manager is paid in the same way as that of a receiver¹, either by a lump sum² or a percentage on gross receipts, or by an annual salary. As in the case of a receiver, additional remuneration may be allowed for extraordinary services outside the normal scope of his employment³.

1 As to a receiver's remuneration see PARAS 436-443 ante. For the purposes of the relevant rules of court, 'receiver' includes a manager: see RSC Ord 1 r 4(1).

2 See eg *Re South Western of Venezuela (Barquisimeto) Rly Co* [1902] 1 Ch 701 at 705-706.

3 *Harris v Sleep* [1897] 2 Ch 80, CA.

Halsbury's Laws of England/RECEIVERS (VOLUME 39(2) (REISSUE))/3. MANAGERS/(2) POWERS, INDEMNITY, REMUNERATION AND DISCHARGE OF MANAGER/494-500. Discharge of a manager.

494-500. Discharge of a manager.

The rules applicable to the discharge of a receiver¹ apply equally to the discharge of a manager, and where the two offices are combined in one person, as is usually the case, his powers of management may be discharged by order of the court without affecting his position as receiver², or leave may be given to him to vacate the business premises³. Such an order is not, however, often required, for powers of management come to an end automatically at the expiration of the limited period for which they are granted, unless they are expressly renewed⁴.

1 As to the discharge of a receiver see PARAS 463-473 ante. For the purposes of the relevant rules of court, 'receiver' includes a manager: see RSC Ord 1 r 4(1).

2 *Morris v Baker* (1903) 73 LJ Ch 143.

3 See generally *Cumberland Union Banking Co v Maryport Hematite Iron and Steel Co, Re Maryport Hematite Iron and Steel Co* [1892] 1 Ch 415 at 420, 426; *Re London United Breweries Ltd, Smith v London United Breweries Ltd* [1907] 2 Ch 511 at 512.

4 *Davies v Vale of Evesham Preserves Ltd* (1895) 43 WR 646. See also PARA 311 ante.